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STATE OF CALIFORNIA

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SENATE RULES COMMITTEE

STATE OF CALIFORNIA

HEARING

STATE CAPITOL

ROOM 3191

SACRAMENTO, CALIFORNIA

WEDNESDAY, JUNE 9, 1993

2:05 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

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APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chair

SENATOR WILLIAM CRAVEN, Vice Chair

SENATOR RUBEN AYALA

SENATOR ROBERT BEVERLY

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

ALBERT ARAMBURU, Director
California Conservation Corps

ROBERT A. WOLF, Member
California Transportation Commission

SENATOR ROBERT PRESLEY

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CHAIRMAN ROBERTI: Albert Aramburu, Director of the California Conservation Corps.

MR. ARAMBURU: Where would you like me?

CHAIRMAN ROBERTI: Sit down, why don't you.

We'll ask you what we ask all the Governor's appointees: why you feel you're qualified to assume this position?

MR. ARAMBURU: Well first of all, Mr. Chairman, I think you have my biographical sketch before you, so I won't go into that.

But there are three main areas, I think, that qualify me for this position. Number one, I was in management for 20 years with the Bell system, including Pacific Telephone and Bell Laboratories. And in that capacity, I administered budgets, supervised personnel, set goals and objectives, and learned to work with the community. And it was in that capacity that I got involved in politics, going from starting a recycling depot, to parks and rec., running for town council, board of supervisors.

In 1981, I made quite a jump in my career going into politics full time at a substantial loss in salary that I think that you all can certainly appreciate. During my tenure on the board of supervisors, I served on the Bay Conservation and Development Commission. I had the longest tenure of 16 years on that, and also the Bay Area Air Quality Management District. I've assumed positions of leadership on those boards, and I say that not out of a sense of aggrandizement, but to illustrate my

1 commitment to public service.

2 The second qualification is entrepreneurship. I
3 started a company in Gilroy, California in 1986. It was a
4 packaging company. We had over 200 employees at one time. But
5 then, I've divested myself of any stock and hold no office with
6 the firm since it subcontracts with the state.

7 Also, I'd like to point out that entrepreneurship is
8 something that the CCC is very much involved with these days.
9 We're very proud to have reduced our dependence on the General
10 Fund by $10 million over eight years, going from $36 to $26
11 million; from 70% to 53%. That trend is going to continue out
12 of necessity. We've worked out good working relationships with
13 the federal, state, local governments, and the private sector.
14 And you're going to see more and more entrepreneurship.

15 Now, it's not just the quantity of work I'm
16 interested in with the CCC. I'm also interested in the quality,
17 and we're adopting some total quality management rules in terms
18 of being able to assess our results, because if our sponsors are
19 not happy with our work, then we're not going to be back.

20 And finally, the third area I'd like to briefly cover
21 is my personal background and history, which suits me well, I
22 think, for this assignment. I grew up in East Los Angeles
23 speaking Spanish. My parents came from Mexico. And I just
24 recently visited East L.A. It's as tough or tougher now than it
25 was then.

26 I had the good fortune to have a strong family;
27 worked with the CIO, a Catholic youth organization, in sports.
28 I had teachers that cared. Went in the Army and found out that

there are leaders and followers, and I came back determined to be a leader. After driving for the General Staff in Germany for 2½ years, I found there was quite a distinction between an enlisted man and an officer.

So, I have always had a remarkable grasp of the obvious, which I think has been one of the keys of my success.

[Laughter.]

MR. ARAMBURU: But you know, many of our Corps members don't have the same advantages, but the CCC does offer that.

It's tough work. I was out this morning at a -- what we used to call a dump, but now it's a solid waste management facility, where they're out there with these covers over their face because it really is quite smelly out there. But we do the tough jobs, and it's good for the Corps. And of course, we provide not only work ethic, but educational opportunities, drug counseling, and vocational counseling.

In the Corps, everybody works hard, and that also includes the staff.

So with that, I'd just like to summarize and say I'm very glad to be here as the Director of the CCC. I look forward to making a bigger and better organization.

I'll be glad to respond to questions.

CHAIRMAN ROBERTI: Thank you, Mr. Aramburu.

Senator Ayala.

SENATOR AYALA: Yes, Mr. Aramburu.

Being one of the authors of the bill that created the CCC, I think I knew pretty well what the role of the CCC was.

1 Can you give us your view of what the mission of the
2 CCC is or should be?
3 MR. ARAMBURU: Yes, I'd like to thank you again for
4 making it a permanent organization, Senator. I certainly
5 appreciated that.
6 I'd just like to reiterate what's in the preamble to
7 the legislation, that we're dedicated to developing youth and
8 protecting the natural resources of the State of California.
9 I think the number one is probably the most important
10 element for me, because that's our most important resource,
11 young people.
12 Now, if one takes a look at the profile of our Corps
13 members, they are not the ones destined necessarily to go on to
14 college, not necessarily. There are some that will go to
15 college, but many of these young people just want vocational
16 skills, working for the Fire Service, Parks and Rec., for
17 Integrated Waste Management. They just want a good job and help
18 with their education.
19 Our job is to further that and to -- and frankly,
20 there's a difference of opinion between national youth service
21 concepts and the ones that we're espousing, because we have more
22 of an orientation to, one, the work ethic. We have a one-year
23 contract initially with a re-up provision. And secondly, we
24 deal with the youngster who is, oh, on the lower side of the
25 socioeconomic spectrum. So again, we are absolutely committed
26 to helping develop our human young resource.
27 And the other is the preservation of the environment.
28 Most of our work is done in settings where conservation is

1 involved, and as we like to say, it's our middle name. So, we
2 just need to get even better at what we're doing. So generally,
3 that's it, Senator.
4 SENATOR AYALA: You generally touched the mission of
5 the CCC. You mentioned earlier entrepreneurship.
6 MR. ARAMBURU: Right.
7 SENATOR AYALA: That's a new one to me. I have no
8 problem with it, but how does it fit into the program?
9 MR. ARAMBURU: Well, in the past we had as much as
10 $36 or $37 million out of the General Fund, and we're down to
11 about $26 million. And the reason we've been able to continue
12 to exist at roughly the same size -- we're down about 400 from
13 our top population; we're down around 1700 Corps members --
14 we've done this through going out and seeking contracts with
15 Fish and Game to build fish ladders, to work with Integrated
16 Waste Management at solid waste sites, to work with cities and
17 counties in terms of landscaping. We have over 100 Corps
18 members in South Central Los Angeles that are doing work out at
19 Inglewood and South Central L.A. So, we're seeking contracts
20 with other governmental agencies at every level, and we know we
21 have to.
22 And as a matter of fact, this month in June, we will
23 be paying our payroll just through those contract
24 reimbursements. So, we have to collect on those. We're getting
25 into the accounts receivable business to continue to succeed.
26 So, we're going out and seeking these contracts at
27 every level of government, being able to provide them with a
28 cost benefit arrangement.

SENATOR AYALA: Was the CCC involved in the coverage of the area that was destroyed by the riots here a couple years ago?

MR. ARAMBURU: Yes, Senator, they were in South Central L.A. and Watts. And in fact, that contingent continues to today. We do graffiti removal. We do restoration of the plant life that was destroyed and so forth. We actually are doing work sort of new to us, in going into schools and educating on recycling, and some of the advantages of being in the CCC, and further outreach to that community.

SENATOR AYALA: Is the Corps involved in the removal of graffiti, or anything like that, in our cities and counties?

MR. ARAMBURU: We absolutely do graffiti removal, and it's tough sometimes because we have to work out a working arrangement with the gangs sometimes to do it.

SENATOR AYALA: With the gangs?

MR. ARAMBURU: With the gangs.

SENATOR AYALA: You negotiate with the gangs?

MR. ARAMBURU: Well, you know, we say, "Hey, we're just here to help out. You know, I mean, we're not here to trash you guys."

And we take great care not to wear bandannas that are blue or red also in that area because those are the gang colors. So, it's not necessarily a case of negotiation, but we're just, let's say, careful about how we do things.

SENATOR AYALA: I remember reading an article where it said that most of the graffiti involved is not by gangs necessarily, but by kids who think it's cool to do something

like that and get away with it.

MR. ARAMBURU: Well, they're doing -- they're called "taggers" now that have their own style, and they put it up there. But again, we find that many people in, like, schools say, "Hey, look, go do some tagging somewhere else, 'cause we've got more paint than you do."

And that's one thing we find, that to remove graffiti, you have to just have a long-term view of it. Just keep painting over it. Don't let them get the jump on you.

SENATOR AYALA: Thank you.

CHAIRMAN ROBERTI: Any further questions? Senator Craven.

SENATOR CRAVEN: I want to ask you a question about an installation in Southern California, San Diego County. Do you still have something at Escondido?

MR. ARAMBURU: No, we don't, Senator, but we do hope to reopen that. We've been working with the Los Angeles City and County for the Jobs Training Partnership Act, JTPA money, and some of that is held up with the stimulus package; some of it will be coming through.

If we expand, which I hope to do in Southern California, we will be looking at it as one of the prime locations to reopen Escondido.

SENATOR CRAVEN: How long has that been gone?

MR. ARAMBURU: Several years now. I'm not exactly sure.

SENATOR CRAVEN: It always seemed to me to be a delightful spot. It was not -- it was far enough away from the

urban core to be somewhat rustic, and it was close enough to the mountainous area where a lot of work has been done to make the trip not too long. At least, that's the way I looked at it.

MR. ARAMBURU: Since our last conversation, I went to meet with the Deputy Administrator of the County of San Diego, who was very receptive to the idea.

There have been some proposals to put in correctional facilities there, but they have not met with community approval, and our facilities normally are very well accepted by the community.

SENATOR CRAVEN: Well, many years ago, when we -- "we" being the County of San Diego -- had access to that property, I put a methadone place in there. I believe they had a lot of problems that, too. If you think they have trouble with prisoners, believe me, we had a previous experience with the people who were the addicts. But it proved to be no problem at all. The people were excited about it, as they quite frequently are without knowing too much about what the operation is.

One other thing that you mentioned, and it's just a matter of information, and that is that you met with the gang people, or what do you call the head of a gang, the gang leader?

MR. ARAMBURU: Yes.

SENATOR CRAVEN: Okay.

Basically, are your troopers going to go in there and, in effect, erase what we attribute to the gangs, the graffiti?

MR. ARAMBURU: We go erase it, period. We don't care

1 who put it there. We're -- if a school district or someone --
2 SENATOR CRAVEN: That's fine, I understand that, and
3 that's why I want to ask the question.
4 Why do you bother to talk to those people?
5 MR. ARAMBURU: Well, let me put it this way. If
6 there's a threat of violence, and it looks like it's going to be
7 a point where it's going to escalate, then our managers are
8 instructed to pull back and then we'll come back. It never has
9 gotten to that point, and there've been some casual contacts,
10 "Hey, what are you doing to my graffiti," et cetera. But so
11 far, we have not had any problems.
12 But we have instructed our people, don't get into
13 confrontations, you know. We'll just come back and do it at
14 some other time. But fortunately, we haven't had to do that.
15 SENATOR CRAVEN: Well, I recognize the obvious, too,
16 and that is that you know 100% more about it than I do, but I
17 just wanted to get your idea on that.
18 One other thing which was engendered by viewing a
19 film on the CCC just within the last few days. Did you see the
20 film? I'm sure you show it to your members.
21 How many people check out after the original
22 enlistment, if you will? Do you know what I'm referring to? In
23 other words, they leave or they're told to leave, I guess, as
24 the case may be. Percentage-wise.
25 MR. ARAMBURU: Percentage -- well, expressed another
26 way, we've put about 50,000 Corps members in the 17 year history
27 with the CCC. The average stay is about seven months. Some of
28 it is a positive attrition because they get other jobs. Some of

it's negative because they can't cut it, or there's a problem.

SENATOR CRAVEN: Yes, that's really what I'm referring to.

MR. ARAMBURU: And we want to -- we want to expand that, and we've looked at our policies. We actually would like to make it more than a one-year term, because when we train young people for fire duty, which is very rigorous, it's 64 hours plus other field time, the California Department of Forestry actually wants to hold on to them longer. So, for us to really get a pay back on our training, we're extending more and more Corps members for at least a second year.

SENATOR CRAVEN: Yes.

Well, in this film they talk about one of these fellows who was, I think, from East Los Angeles. He said he was a second timer, I think was the term used.

Does that mean that he left because he couldn't meet the requirements, then was given a second chance?

MR. ARAMBURU: That's exactly it, Senator.

Sometimes there's an attitude problem on the part of the young person. They realize what they had, and we let them come back for a second chance.

SENATOR CRAVEN: Yes. Well, this man was a very good example. He did a very fine job.

That's an excellent film. That should be shown to more people. I saw it on PBS here.

MR. ARAMBURU: We'll try to. Thank you.

CHAIRMAN ROBERTI: Any other questions?

Is there any opposition in the audience?

Do I hear a motion?

SENATOR CRAVEN: I would move.

CHAIRMAN ROBERTI: Senator Craven moves the confirmation of Albert Aramburu be recommended to the Floor.

Secretary will call the roll.

SECRETARY WEBB: Senator Ayala.

SENATOR AYALA: Aye.

SECRETARY WEBB: Ayala Aye. Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Beverly Aye. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Petris Aye. Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Craven Aye. Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is five to zero; confirmation is recommended to the Floor.

Congratulations.

MR. ARAMBURU: Thank you very much, Mr. Chairman, Senators.

CHAIRMAN ROBERTI: The next appointment is that of Robert A. Wolf, Member of the California Transportation Commission. Senator Presley is here to introduce Mr. Wolf.

SENATOR PRESLEY: Mr. Chairman and Members, thank you.

I am here to introduce Mr. Wolf as a long-time friend and constituent of mine. He's a fine citizen of this state. He's a successful businessman.

He has served on the City Planning Commission and the County Planning Commission; been involved in a number of other enterprises around the community that are very productive.

So, without reservation, I would recommend Mr. Wolf to you. I think he'll do an outstanding job on the Commission, and he looks forward to it. I'd urge your serious consideration of his confirmation.

CHAIRMAN ROBERTI: Thank you, Senator Presley.

Is there anyone here in opposition?

SENATOR CRAVEN: Well, after looking at Mr. Wolf's resume, I think it would have been easier for Senator Presley merely to say those things that he's not involved with. I've never seen one with more activity in my life.

CHAIRMAN ROBERTI: Does anybody have any questions?

Mr. Wolf, we'll ask you what we ask all the Governor's appointees, and that is why you feel you're qualified to assume this position?

Senator Craven's already spoken to your resume, however.

MR. WOLF: Well, Mr. Chairman, thank you for the opportunity to be here today.

And thank you to Senator Presley for the kind words in the introduction.

In response to your question, Mr. Chairman, I think my resume does speak to the issue. My entire professional career has been dedicated not only to my own business, but to the economic advancement of my community and, by extension, the State of California, within the confines of the environment.

Those are two very important things to me. They have been the bellwether by which I've worked, and I'm very proud of my accomplishments and wish to extend my string of service to the California Transportation Commission.

CHAIRMAN ROBERTI: Senator Craven.

SENATOR CRAVEN: Mr. Wolf, are you still in the contracting business?

MR. WOLF: Sir, I am a contractor in the State of California, State of Arizona, State of Nevada, and the State of Alaska.

To answer your question fully, we don't build for other persons. We build for our own account. We're in the medical professional office building business.

SENATOR CRAVEN: Oh, I see.

MR. WOLF: So, contracting has the connotation that we're out bidding work for others, and we're not in that business.

SENATOR CRAVEN: Well, the reason I mentioned that is, in times past we have had a man, who was a very good friend of mine, still is, who was in the tractor or heavy equipment business. And he served, I think, quite well, but he served with some degree of controversy surrounding him because he was considered to have an association with the contracting business. In this instance, basically, we're talking about earth moving, roads, and things of that nature.

That's the only reason I brought it up, because I was going to say do you think that this is going to create a problem where people may have the thought that there's conflict of

interest? Why don't you respond to that.

MR. WOLF: Senator, Mr. Chairman, I'd be pleased to respond to that.

As you might imagine, Senator, when I was first appointed to the City and then the County Planning Commission, much the same concern was voiced. I'll let my record on both those bodies speak for itself.

The fact of the matter is that my own basic principle is that perception is reality, and I have avoided with zealousness the appearance of conflict, even if there is no conflict.

It is in nobody's best interest to put the State of California nor myself personally in a position where that might become an issue.

In preparation for serving on CTC, I reviewed any number of agendas from past meetings and have found nothing that I would have had to abstain on.

SENATOR CRAVEN: Well, it's just a point that came to mind because I remember some degree of agony that this man went through, and it was unfortunate because I don't really -- in my judgment, there was nothing that he should have withdrawn from, but it was one of those things that there was a public thought or a newspaper decided that we're going to ride herd on this for a while, and that's why I feel very strongly about it.

CHAIRMAN ROBERTI: Senator Ayala.

SENATOR AYALA: Mr. Wolf, what is your definition of a balanced transportation system? What does that mean?

MR. WOLF: Senator, in three minutes or less.

1 Senator, it's become obvious to me that -- that the
2 transportation system as we know it is simply not a system of
3 highways; that it very much is -- a transportation system of
4 tomorrow is a poly-modal system where rail is an integral part,
5 where highways are an integral part, where such diverse things
6 as telecommuting is a part of the transportation system when one
7 looks at it from a holistic approach.
8 So, to sit here and to say what it is in the future?
9 It's what it is not today, in that it's a balanced approach,
10 using all the different attributes, all the modalities that are
11 possible and available, and get, frankly, as much for the
12 taxpaying dollar as possible.
13 SENATOR AYALA: Commuter trains and --
14 MR. WOLF: Yes, very much so.
15 SENATOR AYALA: -- share the ride, and buses, and all
16 those.
17 MR. WOLF: They're all integral parts of a balanced
18 system, transportation system.
19 SENATOR AYALA: Not just freeways, in other words.
20 MR. WOLF: Not just freeways. We could never do it.
21 CHAIRMAN ROBERTI: Any other questions? Senator
22 Petris.
23 SENATOR PETRIS: Thank you.
24 In that connection, I note the Little Hoover Report,
25 published before you came on board in January of '92, is pretty
26 critical and claims that there's a heavy pro-highway bias, and
27 there's no plans at all for a balanced system.
28 Since the initiative was defeated on the rail bond,

1 that sets people back even further who feel that part of the
2 balance should be a rail system.
3 Is there any activity now in your group to create a
4 long-term plan with the balanced modes of transportation? Is
5 anything happening on that now?
6 MR. WOLF: Sir, I think I can speak for all my
7 colleagues on the CTC that they're advocates of a balanced
8 approach to transportation, and a balanced approach includes
9 rail.
10 Sir, understanding that the CTC does not initiate
11 projects, we are in reliance upon regions that put forth
12 projects within their regions, and the CTC, as an honest broker,
13 sorts them out and attempts to prioritize and provide funding.
14 I think that there's a tremendous commitment on the
15 part of my colleagues and the staff at CTC to rail.
16 Sir, I brought with me some compilation of rail
17 funding versus highway funding that took place through February
18 this year. I'd be happy to share it with you, if you would like
19 to take the time.
20 SENATOR PETRIS: Sure.
21 MR. WOLF: May I?
22 CHAIRMAN ROBERTI: Please.
23 MR. WOLF: Senator and Mr. Chairman, this is a
24 compilation that went through February 26 of this year, and I'm
25 sorry I don't have through current. But I think it will give
26 you a sense of what's going on.
27 From 1993 to the date of this report, which was
28 February 26, $212 million in highway allocation, $246 million in

mass transit allocation. In the year 1992, a billion five ninety in highway, billion one twenty-two million in mass transit. 1991, billion one twenty-one in highway allocation, and fourteen million in mass transit. In 1990, 924 in highway, 84 in mass transit.

Senator, these are grand totals of three billion eight hundred forty-nine for highway allocation; two billion two hundred sixty-seven million for mass transit. A difference of approximately $1.6 billion.

In the scheme of things, as this was unwinding in this report, is a gradual, a harmonic progression, if you will, after the blueprint legislation. I think that this shows a clear commitment on the part of the Transportation Commission to rail, and we -- I believe I can speak again for my colleagues when I say that we welcome applications that apply fixed guideway transportation.

SENATOR PETRIS: It seems to be a big jump from 1990 afterward. Maybe it was motivated in part in the later years by the Little Hoover Commission Report.

It just seems strange to me. You have the Commission, but it doesn't have authority to do anything; you just coordinate locals, and maybe you can recommend to Caltrans. Do you ever do that, that they do certain things?

MR. WOLF: Well, sir, I don't know that the Commission doesn't have any authority.

As I understand it, the Commission has a clear charter to -- if I can, Senator, just take a moment. And my understanding of it would be to divide the responsibility of the

Commission into a triad, into three different pieces: the first being a responsibility by statute to program a seven-year STIP; the second area of responsibility being to advise the Legislature and the Governor on transportation issues; and the third part of the triad, Senator, I would characterize as being an honest broker, and that is monitoring that which had been programmed and allocated before.

SENATOR PETRIS: By the regions, by the state, or by whom? By everybody?

MR. WOLF: I'm sorry?

SENATOR PETRIS: Programmed by whom?

MR. WOLF: The program -- the transportation improvement plan that was programmed by the Transportation Commission.

SENATOR PETRIS: What do you foresee for the coming year? In the figures you presented, are the figures going to be about the same? Is it getting closer and closer to an even balance? Is there going to be more rail than roads as we --

MR. WOLF: Sir, I can't speak to that right now. We're in the process now of getting a fund estimate from Caltrans which will be the basis by statute from which we program improvements forward.

Preliminary numbers, as you might guess, are less than exhilarating on the amount of dollars that will be available. And until the actual fund estimate is clear, and we're able to ascertain whether or not we're programming against a real number or whether we'll be programming provisionally against some potential future revenue, sir, I'd be unable to

answer that question. I'd be in a far better position after we're clear from direction from the Legislature whether or not we will be programming provisionally for the out years.

SENATOR PETRIS: Now, when you do programming, is this on a regional basis? Do you sit down with the regional people all over the state and coordinate your programming with them, or do you work with Caltrans? How do you go about doing this?

MR. WOLF: Sir, I'm going to explain to you the system as I understand it, understanding I've been there for three meetings.

But there are formulae by which counties obtain minimum amount of fundings, and there is a 60-40 north-south split in the State of California: the southern 13 counties receiving 60% of available funding, the northern 45 counties receiving the 40%.

Using those formulae and any number of formulas within that as far as five-year programs and four-year programs, projects are nominated within regions, within districts, brought to and sort of coalesced by Caltrans, and brought to the Transportation Commission with specific recommendations.

The Commission is then tasked with the responsibility to prioritize those lists within the confines of those formulae.

I hope I answered your question, Senator.

SENATOR PETRIS: Well, I think you have in part.

I'm still looking for answers to the Hoover Commission recommendations, which says that the Legislature,

1 working with the Governor, ought to come up with directions to
2 all the transportation agencies to have a long-term plan. We're
3 supposed to have one in place -- but they don't like it; it's
4 not good enough -- and to make it cost effective. Specifically
5 it says:

6 "The state has not adopted an
7 adequate long-term plan for the state
8 transportation system, thus hindering the
9 cost-effective development of a system
10 that will improve future mobility.
11 "The state does not adequately
12 evaluate transportation alternatives based
13 on cost-effectiveness, thus leading to
14 unnecessary delay and expense ...."

15 And in another portion it said that that's due to a couple of
16 things. One of them is a lack of advocacy at the Governor's
17 cabinet level for doing something like this, and I forget what
18 the second one was. Probably it was lack of interest on the
19 part of the Legislature; although, we have passed some bills.

20 So, my question is, maybe you're not familiar since
21 you've only been there a short time, you're not familiar with
22 the Hoover Report and its recommendations. They seemed to be
23 very sensible to me and echo what everybody says: we need a
24 balanced system. But when we get down to the nitty-gritty, we
25 don't seem to put up the money or the priorities that you talked
26 about that are needed to come up with a balanced system.

27 MR. WOLF: Senator, I can respond in part, and that
28 is, prior to this meeting, I had the opportunity to visit with

the Planning Department of Caltrans, the actual agency tasked with the responsibility of preparing that particular report, and found them firmly entrenched in the midst of producing a 20-year program that addresses the issues to which you just spoke.

Part of what I think is perhaps a misunderstanding, and I'm not clear on this, and again, I'll plead my newness to the Commission, but there has been a tremendous amount of what I'll call consensus building being -- having been done prior to this amongst many different areas of -- competitive areas, I'll say, within the state to try to come together to try to build some consensus so that the platform from which a 20-year plan springs would have as its foundation, as its basis, some consensus before constantly going through this re-invention of a program that, without buy-in, will never be implemented.

SENATOR PETRIS: Well, the other element in this is highway bias that the Hoover Commission perceives in Caltrans.

Now historically, that's understandable. Caltrans originally was given the authority to build roads, not to build railroads, just vehicle roads; highways, I should say.

But more and more, they've been taught to expand and go into rail, and they have done it.

Well, does your review, limited as your time has been, lead you to conclude that we're finally on the right track? That's not intended as a pun.

MR. WOLF: Well, Senator, in my small tenure on the Commission, I can share with you that there is a tremendous effort within the body of Caltrans, as I perceive it, to make the moves that you're talking about, to make sure that we're

1 addressing a poly, multi-modal approach to transportation.
2 An agency the size of Caltrans, with 20-some-thousand
3 employees, I'm sure that you'll agree, is similar to docking the
4 Titanic. You push a little here, and push a little there, and
5 push a little here, and eventually you get the ship where you
6 want it.
7 I see a lot of people and a lot of tug boats within
8 the agency pushing real hard, from the Director on down, and
9 it's clear to me that his direction has been that we will
10 address it, and we will look at this as a multi-modal
11 application of transportation.
12 SENATOR PETRIS: Thank you.
13 MR. WOLF: Thank you, sir.
14 CHAIRMAN ROBERTI: Senator Ayala.
15 SENATOR AYALA: One final question to Mr. Wolf.
16 Allow me to surface my ignorance, but where is Golden
17 State University?
18 MR. WOLF: Golden State University is an extension
19 school out of Los Angeles. San Marcos is the campus.
20 SENATOR AYALA: At the State University at San
21 Marcos?
22 MR. WOLF: It's called the State University S.M.
23 SENATOR AYALA: And this is an extension of that?
24 MR. WOLF: An extension program.
25 SENATOR AYALA: Thank you.
26 CHAIRMAN ROBERTI: Are there any further questions?
27 SENATOR AYALA: Move.
28 CHAIRMAN ROBERTI: Senator Ayala moves confirmation

be recommended to the Floor.

Secretary will call the roll.

SECRETARY WEBB: Senator Ayala.

SENATOR AYALA: Aye.

SECRETARY WEBB: Ayala Aye. Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Beverly Aye. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Petris Aye. Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Craven Aye. Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is five to nothing; confirmation's recommended to the Floor.

Congratulations.

MR. WOLF: Thank you, Mr. Chairman. Thank you, Members.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 2:50 P.M.]

--oo0oo--

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WEDNESDAY, JUNE 16, 1993

2:05 P.M.

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Evelyn J. Mizak
Shorthand Reporter

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SENATOR ROBERT BEVERLY

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PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

CAROL J. BENTLEY, Member
Board of Prison Terms

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CHAIRMAN ROBERTI: I see Assemblywoman Bentley is here, so why don't we take you up rather than go through all these references.

I should mention also that Mr. Rousselot for Board of Prison Terms is off calendar, will be re-scheduled for the 30th of this month.

MS. BENTLEY: Thank you, Senator.

CHAIRMAN ROBERTI: We know you well, but we'll ask you what we ask everyone: why you feel you're qualified to assume this position?

MS. BENTLEY: Surely.

I, as you may know, went to work for the State Senate in 1972 for then-Senator Jack Shrade, and continued to work with Senator Jim Ellis until 1988, when I was elected.

So, I have a long history of our -- changes in our criminal justice system, seeing the changes from determinate to indeterminate, the death penalty in and out, the response of the Legislature to the public's feeling that we need to have longer prison sentences.

Then, when I was elected to the Legislature in 1988, I focused my legislation on criminal justice. I served four years on the Public Safety Committee. I was appointed Vice Chair of the Assembly Judiciary Committee. So, although not an attorney, most of my legislation and work in the Legislature focused in this area.

I carried legislation concerning victims' rights, and

legislation that required the Department of Corrections to withhold good time for those inmates that weren't participating in drug and alcohol programs if they had that kind of a problem, so, in addition to other legislation that I carried in the area in increasing penalties.

CHAIRMAN ROBERTI: Thank you very much.

Are there any questions of Ms. Bentley?

Is there any opposition in the audience? Please come forward.

MR. COMISKEY: Good afternoon. My name is Paul Comiskey. I am the Director of the Prisoners Rights Union.

I have come to know Ms. Bentley in the period of time that she's talked about in her service on the Public Safety Committee. I've always found her to be a fair, reasonable, compassionate person, and a thoughtful person in terms of the things that she's tried to do regarding prisoners.

The obvious question you would ask is: why, then, would I oppose her confirmation?

The reason I oppose her confirmation is that I believe that under Governor Wilson, that a mandate has gone out to members of the Board of Prison Terms not to give anyone a parole date. The parole board is now called the nonparole board.

The Governor was given the authority in 1989, with an initiative that was passed, to take away parole dates from prisoners. I believe that he's taken a very large number of parole dates, and I don't think in the last two or three years any prisoner has received a parole date from the parole board.

The parole board is very heavily right now pushing legislation that would permit them to give prisoners a five-year setoff, which means that they can tell him -- right now the existing law is that if they don't reasonably believe that a person would be eligible for parole or suitable for parole within one year, they can say, "Come back in two years." Or, if that person's been convicted of multiple homicides, they can tell him to come back in three years. They're very much pushing right now legislation to give people setoffs of five years.

The parole board becomes kind of a sinecure for people. It's a rather useless appendage if they go to hearings day after day and simply deny everybody who comes before them a parole date, and then use the authority they have to set people off for longer and longer periods of time.

Over -- I have been with the parole board since the beginning. Since 1975, I've been very, very active in prisoner legislation and litigation. I've sued 18 counties. I've represented hundreds of prisoners, both before the parole board in hearings, in writs, and many other ways.

I've gone to the meetings of the parole board over a long period of time, and right now there's less interest on the parole board than I've ever seen. I used to go there, and they would have very spirited discussions about whether a psychological program at a prison was really serving its purpose to give them the right information they needed to decide whether somebody would be a good candidate for parole, things like that.

Now they talk about how to run the machines, the

recording machines. They talk about the scheduling so they can get away earlier on Friday, things like that.

I really think I do not have anything against Ms. Bentley personally, but I think that a position on the parole board has basically become a job where the person is given the mandate by the Governor to simply, "Let's have zero risk. Let's not give anybody a parole date; we'll keep the victim rights groups happy. We won't risk somebody going out and doing something that will cause us a lot of embarrassment." And I think that's what is happening right now.

So, I think that rather than simply rubber-stamp people who come before this Committee and allow them to sit on this board, and allow them to collect big salaries, and allow them to accrue more pension funds, allow them to collect per diems, that someone should say, "Hey, let's take a look at this."

If the parole board is not going to give anybody a parole date, why don't we simply abolish it, and we could have people recommended for parole by the classification staff of the prison, or somebody like that, because the Governor is ultimately the person who decides whether somebody gets out or not.

That process itself is shrouded in secrecy. I've made a number of attempts through the Governor's legal secretary to find out what the process is of how they review when people are denied or granted a parole date, and I've been told a number of times simply to get lost. No information whatsoever has been given about that process.

So, I think that it's time for us to take a look. This is -- I think it's very important for people inside the prisons to go to the parole board and to expect fairness, and to expect that the law will be applied. And that if they have not behaved themselves in prison, they've not engaged in the kind of rehabilitation that they should engage in, then they should expect to be denied a parole date. If they don't come there with the kind of psychological suitability for getting a parole date, they should not expect a parole date.

But if they have done the best they can, and they've spent many, many long years in prison, and they've -- as well as they can they've rehabilitated themselves, then they ought to get a parole date. People ought to have some sort of hope and expectation when they go to that parole board that they will be treated fairly.

In recent -- the last couple of years, I've basically as a lawyer told people, "Look, don't hire me right now to represent you before the parole board because you'll be wasting your money. And I really have an ethical problem with representing you before the parole board, because I don't think you're going to be treated fairly."

So, I think that with the appointments that the Governor has recently made that there's been a very definite change in attitude and practice on the parole board. The people that are leaving now, Ms. O'Connell and Mr. Tong, were people who I thought were fair. I'm very sorry to see them leaving, and I think that the trend that we see is simply going to continue.

Thank you.

CHAIRMAN ROBERTI: Thank you very much.

Ms. Bentley, on the issue of no parole dates being given.

MS. BENTLEY: Yes.

I'd just like to point out that that is some misinformation. First of all, Ms. O'Connell is still on the Board of Prison Terms.

And we do give parole dates. There is no mandate to us not to give parole dates. And I have given parole dates.

And we look at exactly what's been outlined to you that we should look at when we give a parole date. We look at the psychological reports. We look at what the prisoner has done while he's been in the institution. We look at his parole plans: does he have a job and support out there in the community. Because yes, there are prisoners that should be given parole dates, and we're doing it.

There are also those that should not be given parole dates, and we're not giving to those.

CHAIRMAN ROBERTI: Any other questions of Ms. Bentley? Is there anyone else in the audience who wishes to testify?

Do I hear a motion?

SENATOR CRAVEN: Move.

CHAIRMAN ROBERTI: Senator Craven moves that confirmation be recommended to the Floor.

Secretary will call the roll.

SECRETARY WEBB: Senator Ayala.

SENATOR AYALA: Aye.

SECRETARY WEBB: Ayala Aye. Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Beverly Aye. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Petris Aye. Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Craven Aye. Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is five to zero; confirmation is recommended to the Floor.

Congratulations.

MS. BENTLEY: Thank you.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 2:40 P.M.]

--oo0oo--

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Evelyn J. Mizak
Shorthand Reporter

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RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

THOMAS S. SAYLES, Secretary
Business, Transportation and Housing Agency

AARON READ
California Association of Highway Patrolmen

TIM EGAN
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--oo0oo--

CHAIRMAN ROBERTI: We have the appointment of Thomas Sayles, Secretary of the Business, Transportation and Housing Agency.

Mr. Sayles, please come forward. Sorry we had you wait a little bit here.

Senator Craven, you get to assume the Chair. I have to return a phone call. I hope to be back.

Mr. Sayles, we'll ask you what we ask all the Governor's appointees, and that is why you feel you're qualified to be in this position?

MR. SAYLES: Good afternoon, Mr. Chairman and Members of the Committee. It's a pleasure to be here.

I come here, quite simply, seeking your support. I believe by professional background and training, I am capable to do this job.

I have been serving in this position for the last three months. I've found it to be enormously challenging, and I very much would like an opportunity to continue to work with the Governor, the Legislature, my friend and colleague Julie Wright who is the Secretary designate for Trade and Commerce, to help improve the California economy and, indeed, to improve the quality of life for all Californians.

And with that brief statement, I would simply urge your support.

SENATOR CRAVEN: Thank you very much, sir.

Does any Member of the Committee wish to ask the

nominee some questions?

SENATOR PETRIS: Yes, if I may.

SENATOR CRAVEN: Senator Petris.

SENATOR PETRIS: The CAL-VET folks come under jurisdiction; don't they?

MR. SAYLES: Under HCD.

SENATOR PETRIS: Yes. I have a report from that department dated May 3rd, from Mr. Pride, Chief of the Division of Farm and Home Purchases. And looking over the report of the types of loans and the borrowers, there's one line here that kind of struck me and aroused my curiosity. That is, the number of loans and the percentage of total loans, and they're categorized according to the income level of the borrowers. Lower income, very low income are the only two on here. And the percentage of the total loans in 1992 for very low income was 5, and for lower income was 29.5. So, the total was about a third, a little over a third, for those two categories.

I'm wondering why it's so low for the very low income? Is it because there's only a few veterans in the very low income category, or they just don't feel confident in extending the loan to them?

I know there are provisions in the Code which require special attention to that in extending the installments, and it Code gives the department some pretty good leeway in helping those in the lowest income category.

Now, this is pretty remote from your overall stuff, and you may not be in touch at all.

MR. SAYLES: I apologize. That is not something

that's come to my attention. I, of course, will be glad to look into that.

SENATOR PETRIS: Yes, I would appreciate it if you would.

I've raised these questions all across the board for all our policy housing lending agencies, and I would appreciate getting the information. If I had received the report earlier, I would have called you and talked about it.

There's a section I just want to cite, one section in the Code, if I could find it. Well, I don't seem to have it here, so I won't take up any more time, but it has to do with authorization to do certain things to facilitate the loans to people in the lowest income level.

Anyway, if you could check that out and get back to me, I would appreciate it.

MR. SAYLES: I'd be glad to, Senator.

SENATOR CRAVEN: Ruben, before we go to the audience?

SENATOR AYALA: I wanted to ask Mr. Sayles, do you think we need to raise gasoline tax any further to adequately maintain our roads and highways in California? Do you think the only solution is to raise gasoline tax?

MR. SAYLES: No, I don't think so. I think that's -- obviously, we're looking at the overall how we finance transportation here in the state, and I've spent, I would say, a disproportionate amount of my time looking at just that issue right now.

But I would say it's premature for us to take the view that a tax increase is necessary at this point in time.

SENATOR AYALA: We have more automobiles in California than ever before. Obviously, they're all buying gas. Why is it that we're always short of funds, transportation-wise?

MR. SAYLES: Well, there's several reasons. First of all, even though there are more automobiles, because of the recession less people are driving. We've lost about $600 million in that regard.

Secondly, our STIP has not been fully funded. Most of our federal dollars are down. So, there are financing issues we have to deal with.

But I don't think at this point it necessitates a tax increase.

SENATOR AYALA: Some counties have come forth with their own sales tax -- half a cent, for instance -- for the purpose of transportation needs.

Do you think all counties should be able to do that in order to maintain their town local streets and so forth?

MR. SAYLES: Well, I think all counties are in a position to do that. It's a question of whether or not they elect to do it.

And what you will find, though, Senator -- I serve as an ex officio member of the MTA, which is the Transportation Authority in L.A. County, and their sales tax revenues are off; their projections are off also.

So, this issue of how we finance transportation is one that I think we all have to take a hard look at.

SENATOR AYALA: The counties get allocations from gasoline tax. If they pass their own sales tax, like in San

Bernardino and Riverside, that is not counted as part of the apportion they get.

MR. SAYLES: Yes, that's not part --

SENATOR AYALA: That's over and above.

MR. SAYLES: That's over and above. That's separate local revenue.

SENATOR AYALA: Thank you.

SENATOR CRAVEN: Is there anyone in the audience who would like to speak in favor of the nominee?

MR. READ: Thank you very much, Mr. Chairman and Members. Aaron Read, representing the California Association of Highway Patrolmen.

It is our distinct pleasure to be here in support of Secretary Sayles. And our President, Mr. Gordon Koolman, who is a CHP officer himself, would have been here in person, but he is recovering from major surgery.

So, it's my pleasure to express to you their very strong support of Secretary Sayles.

In just a matter of a few months, he has brought a new spirit of cooperation and a new spirit of energy to the Agency and to the CHP, which is a major department under his jurisdiction. We're indeed proud to work with him, and I know we look forward to the years ahead.

And so, for whatever we can say, we want to urge his confirmation.

Thank you.

SENATOR CRAVEN: Thank you, Mr. Read.

MR. EGAN: Thank you, Mr. Chairman. I'm Tim Egan.

I'm representing two clients. The first one is the L.A. County Metropolitan Transportation Authority, which Secretary Sayles has already indicated he serves with distinction as an ex officio member.

This is the first time -- I'll recall this to the Committee -- this is the first time that we've had a gentleman in his position, I guess, more or less volunteer to serve as an ex officio member on a very, very rugged local transportation group. And I think this shows a good desire on the Secretary's part to build that state and local partnership, which, Senator Ayala, we feel is very, very important to move the transportation projects that we have before us.

The second client I'd like to point out that strongly supports the Secretary's nomination and confirmation is the Escrow Institute of California. In Mr. Sayles' previous position as the Commissioner of Corporations, he was our regulator. This association is the 1100 licensed escrow companies, and I believe they were the largest body, if not the most difficult body, to regulate as the Commissioner of Corporations. And in that position, we found Mr. Sayles to be a fair and honest regulator, and a gentleman who had a very soft, if not diligent, spot in his heart for small minority-owned businesses, which are these escrow companies.

And both my clients strongly encourage the confirmation of Mr. Sayles as the Secretary.

Thank you.

SENATOR CRAVEN: Thank you very much.

Anyone else wish to speak in favor? Anyone opposed?

There appears to be none.

Any other questions? Senator Petris.

SENATOR PETRIS: I have a question on the ABC. They got a lot of complaints when the horrible, enormous cutting of revenue-producing jobs was made, even from people who were being regulated. They thought it was for the good of the industry to keep those people there and monitor the bad guys.

Have you any figures on what, if any, revenue loss has resulted from the loss in that personnel?

MR. SAYLES: I think we can get those figures for you. I can tell you, though, Senator that --

SENATOR PETRIS: Has there been a loss? Do you know whether there's been a loss or not?

MR. SAYLES: I don't know off-hand, but I can tell you it is one of the things that we're in the process of fixing.

One of the things that you will -- by December, we'll be in a position where all routine applications will be processed in 30 days, and the more complex ones around 45 days. And we're also adding staff so we can process these applications in a more timely basis.

The staff is, we had moved the enforcement staff out of enforcement, and they were in a position where they were trying to process license applications. They were going, quite frankly, too slowly.

We have now -- we are increasing the number of license processors now, and so we're moving those applications out in a more timely fashion.

I can get you numbers, though, on whatever the -- on

what, if any, revenue was lost over the last year.

SENATOR PETRIS: Yes, I'd be interested. It got so bad there for a while, I don't know how it is now, but an applicant would have to shop around a whole region to find an office that could take him by appointment in something less than 30 or 60 days just to come in and file the original application and talk about it because of the shortage of inside help. That's over and above the enforcement cuts.

MR. SAYLES: If I may, on that point, we have fixed that problem.

SENATOR PETRIS: That's been fixed.

MR. SAYLES: That has been fixed. You can now come in and get an appointment.

SENATOR PETRIS: Thank you.

SENATOR CRAVEN: Senator Beverly.

SENATOR BEVERLY: Move the Committee recommend confirmation.

SENATOR CRAVEN: Senator Beverly has moved. No further comment, call the roll.

SECRETARY WEBB: Senator Ayala.

SENATOR AYALA: Aye.

SECRETARY WEBB: Ayala Aye. Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Beverly Aye. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Petris Aye. Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Craven Aye. Senator Roberti.

Four to zero.

SENATOR CRAVEN: Four to zero; recommended to the Floor.

Congratulations.

MR. SAYLES: Thank you very much.

SENATOR CRAVEN: Next is Julie M. Wright, Secretary of Trade and Commerce Agency.

We'll ask you as we ask all of the nominees to tell us why you feel you are appropriate for this job, or qualified as well.

MS. WRIGHT: Thank you very much, Senator Craven.

Let me first appreciate expression for the creation of the Trade and Commerce Agency with bipartisan support. As you know, the Council on California Competitiveness established by the Governor, as well as the Assembly Democratic Economic Prosperity Team, both recognized the need to have a cohesive and focused economic development program for California to respond to the many challenges that are facing our state.

I guess if I could speak just a moment about why I am qualified, I think the two primary roles of this Agency are to be involved in the public policy arena on issues that affect business and the business climate in California, and also to be a strong and focused marketing organization.

One of the most significant achievements we've made in this new, young Agency is the establishment of Team California, which is a network of economic development people all over the state. The vision that that speaks to really was borne out when California thought it might have an opportunity

to bid for the Mercedes-Benz manufacturing facility here in California. And with that network, which consists of 600 people, we had 50 Red teams established, ready to submit a proposal to compete for that plant. Unfortunately, we subsequently learned that they would not consider a location west of the Mississippi because two-thirds of the production was going back to the European Continent, but that is a key part of the vision.

And I guess the one other thing that I would like to note is that the Legislature plays a very important role in Team California. Senator Ayala was involved in the DEFAS competition, which incidentally is still open, and in defense conversion. Senator Beverly has been a very valuable player on the retention of the Los Angeles Air Force Base. Senator Roberti on the Fox Studios expansion in Los Angeles and other projects like that within the greater Los Angeles area. Senator Craven, certainly your ongoing support of the Leggo Family Park in Carlsbad, and Senator Petris, for your strong support on trade and investment issues and most particularly in our dealings with Japan.

And so, this is an approach and an organization that really depends on collaboration, and I think we've made some substantial progress. I guess that's one of the primary reasons that I feel qualified for this job.

SENATOR CRAVEN: Very well.

Is there anyone here who's like to speak in favor of this appointment? Anyone who wants to voice any objection? Well, there appears to be none.

I've got a question I'm going to ask you. I've got in part an answer already.

Why is the Administration somewhat reticent to appoint to positions already existent in other countries, you know, a director? Can you answer that for me?

MS. WRIGHT: I'd be very happy to answer.

I can speak to the time since the formation of this Agency. And since it has been formed, which is about five-and-a-half months ago, we have conducted a thorough review of the overseas offices. We have established marketing plans for each office. We established accounting systems so that their functions could be merged into that of this Agency, and we've created an operations manual.

We've also done more than two dozen interviews relative to hiring for the overseas offices, and yesterday announced the appointment of an individual to head the Mexico City office, a business person from Los Angeles who has been involved in trade for quite some time.

We are about to announce an appointment in the Frankfurt office, and now that the budget issues have been resolved, I am hopeful we will move forward rather quickly on the Tokyo office.

As you undoubtedly know, the Hong Kong office has been staffed by an economic development professional for some time.

SENATOR CRAVEN: Nancy Michel just gave me this release dealing with the Governor's appointing Reinhold C. Shrader, and that's the gentleman to whom you referred, I

presume, for the Mexico City operation. We're happy to see that.

MS. WRIGHT: Yes.

SENATOR CRAVEN: Does Senator Petris have a question?

SENATOR PETRIS: Yes.

How close are we to getting somebody in Japan?

MS. WRIGHT: Well, I don't know that I want to put a time table on it, but within several weeks.

The concern is, of course, within Japan the staffing of a director costs more. I will tell you that since I have made one mission to Japan, and several of my staff have embarked on specific projects there, the Acting Director has done a very fine job. And while Japan is, obviously, a key priority, it gave us a little bit of freedom to staff the offices where the absence of a director was really critical.

And so, we have embarked on the interview process in Japan, and I'm hopeful that we will conclude it very quickly.

SENATOR PETRIS: Does that mean you're going to draw on someone who lives there now or is working there?

MS. WRIGHT: I don't want to rule that out. It's obviously a cost effective way to go, and if we can identify the right candidate who is a U.S. national in country, that can be not only a very expedient way to go, but would mean that we were dealing with someone with some direct and recent experience.

SENATOR PETRIS: Are you requiring knowledge of the language, knowledge of Japanese?

MS. WRIGHT: Where ever possible, yes.

SENATOR PETRIS: Do you know how we're doing through

that office? I know there are a lot of other people trying to increase our exports to Japan.

MS. WRIGHT: Right.

SENATOR PETRIS: Do you know, looking only at that portion that's attributable to our particular office in Tokyo, over the past couple of years have we been able to increase the exports through their efforts, through our representative over there?

MS. WRIGHT: Every single one of our offices plays that role. The difficulty that we have is that we facilitate the business relationships. We often assist in taking companies to trade shows and bringing people through on trade missions. And that is with respect to both exports and foreign direct investment in California. And in both cases, of course, Japan is one of our leading trading and investment partners.

I would have to research to attempt to give you specific numbers, because we don't in all cases know the outcome of having made that happen.

SENATOR PETRIS: I hope we can get a good person in there.

I've been over. I visited that office some years back, as well as the one in Hong Kong. There's a lot of work to be done there.

MS. WRIGHT: Absolutely. You're right.

SENATOR PETRIS: Thank you.

MS. WRIGHT: Thank you.

SENATOR CRAVEN: Senator Ayala.

SENATOR AYALA: We hear so much about industry and

business leaving California these days.

To what extent are the declining conditions in California -- of course, they're the result of the national recession -- but to what extent are public policies in California contributing in your opinion to our economic problems?

MS. WRIGHT: Well, I don't mean to sound flip, but we have tried to get a handle on exactly what business flight means in California. There have been some studies conducted by both PG&E and Southern California Edison, who, of course, have a very important vested interest in business retention in California. And then we've had numerous studies conducted by both the DEPT and the Competitiveness Council, and several other groups, and then within my Agency, where we have kind of front-line business contact with people.

I think these issues are critical. They typically involve three primary areas. One is workers' compensation. The second is permit streamlining, the length or the unpredictability of time to get permits, which to some degree my Agency has mitigated in some instances through the Red Team approach, but it's obviously not a sound long-term public policy solution. And third is taxation. And I will give you a brief example on the latter.

As Senator Craven knows well, we are competing for the Leggo Family Park. One of the issues that they have raised is that in northern Virginia, which is our competition, they can only operate this park about five months a year. In California, it could be a year-around park. And believe me, we are selling

the assets of California. Virginia's corporate tax is 6%; ours is 9.3, and that's one of the key factors that, when they run their numbers out, has them tell us -- and we are looking at them closely to see if we can refute them on any criteria -- but they have told us that a five-month park in Virginia is approximately as profitable as a year-around park in California.

So, those three issues come up repeatedly, and I think that without debating the areas of potential disagreement, that most of us have come to agreement that those are the three primary issues that affect our competitiveness as a state.

SENATOR AYALA: What do you think is the appropriate role of government in economic development? How do we fit into that, to give incentives and promote, not only for existing industry to expand, but to attract new industry coming in to provide, obviously, more employment?

MS. WRIGHT: The state obviously can't do it all. The state provides a very important umbrella, which is why we established Team California. And even in writing a competitive proposal for a business attraction or expansion, it's very important to have a local partnership. And each of us brings different things to the table.

For example, transportation issues have come up on some of our proposals because, in fact, that infrastructure is often needed or required in order to allow for a business expansion. Those decisions are -- are developed through the regional transportation planning process, and so the state really cannot appropriately come in and edict, but in partnership we can agree to the priority and work with the local

community to determine if they have an interest in amending their plan.

As to being competitive, I guess my bottom line is that California needs to concentrate on being competitive at the bottom line. That does not mean item for item for item, because we do have some costs in California that there's not a whole lot we can do about, except that the recession has probably helped a bit. But aside from that, our companies in California are endeavoring to be globally competitive, and they themselves are restructuring in order to bring their costs into line to do that.

So, I think we have to concentrate on two areas, and that is what costs State inflicts on business. If it's a cumbersome permitting process, that does cost money to a business. If it's workers' comp., which isn't even a budget issue, it's still a cost to a business. So, I think we have to pay particular attention to those areas.

And then, secondarily, we need to assure that our other policies, whether they are incentives or tax policies, are -- maintain a competitiveness with other states.

As you know, the Speaker is carrying a manufacturing sales tax exemption, and the Governor identified money in the '94-95 budget and has made it a priority of his Administration, having identified the money.

Let me just simply say by way of example that that is a competitiveness issue, because 42 other states either have a partial or full exemption from sales tax, or they don't have a sales tax. And so, for example, in the Intel expansion to build

a billion dollar wafer fabrication facility, what Intel has told us, and told us in our most recent competition, is that California inflicts an $80 million penalty. So that when they run out their numbers in a site selection decision, it is an issue that puts us at a competitive disadvantage.

And there are a lot of ways to address these things, but those are the two major ways that I think that we do need to look at them.

SENATOR AYALA: Well, we must be doing something wrong, because the recession is nationwide and beyond, and yet we keep reading, especially from the Chambers of Commerce, that we're losing because of our lack of aggressive determination on making it more attractive for the people to stay here. And of course they mention the workmen's comp., and I agree with them on that score.

But are we doing something else that we should be correcting that other states aren't doing? Why is it that we're losing supposedly all these people to other states when conditions should be similar everywhere we go?

MS. WRIGHT: Let me say that I think there are three things that contribute to the job loss: certainly, the recession; secondarily, Defense budget cuts and base closures, which have just terribly disproportionately hit our state; and third are what we've been calling our self-inflicted wounds, and those are the things that we should concentrate on.

The Chamber is a member of Team California. And in fact, when we conducted a business mission to New York in June to call on 50 corporate headquarters with operations in

California, in part to tell them the good things that were happening this year in the Legislature and in our own attitude and process for business attraction and retention, that's a team effort. And I think all of us need to work on what needs to be done to truly make California competitive, and then we all need to be positive about a terrific state.

SENATOR AYALA: You mentioned the closure of defense plants have contributed to the problem, but the problem existed before we started to do that. It was happening during the time that the Cold War was still with us, and we needed all these defense plants throughout. Yes, it think it is contributive, but I don't think that's the main reason for the problems that exist in California, and we have a lot of unemployment because of that.

MS. WRIGHT: The Defense budget's been flat in real financial terms since 1986, and a lot of defense companies have been diversifying. But it really took a dive beginning in about 1991, and as a result, another thing that we are potentially suffering from is the necessary consolidations in that industry. So that, for example, when Hughes bought the General Dynamics missile business, they did it in part because they had a big, modern, under-utilized facility in Arizona. And so, the handwriting was on the wall.

I think we -- to some extent, we are just going to have to struggle through the re-creation of the 800,000 jobs we've lost, and the 300,000 jobs a year we need to create, but complement that with the broadest based aggressive marketing program that, within our limited resources, we can establish.

SENATOR AYALA: Thank you.

SENATOR CRAVEN: Senator Petris.

SENATOR PETRIS: I've been very confused by conflicting reports on the business flight. The Southern Cal. Edison report, as I recall, concluded that it was highly exaggerated. It seems to be a phantom out there. I don't know of any list that's reliable that's been published by the state or the State Chamber that lists all these companies.

Now, we all know of examples of companies that have left in our own districts, but I haven't seen anything in the literature that verifies the enormous wholesale exodus that the L.A. Chamber, for example, claims has been going on for some time. Now, I guess I should have checked with the L.A. Chamber. Maybe they have a list.

Does your Agency have a score card that keeps track so that we'll know which companies have left and for what reasons so that we can take corrective action and limit the flow?

MS. WRIGHT: First, let me say I think that the Edison study identified quite a significant number of businesses that had left, but it wasn't a comprehensive sample.

We looked at a variety of ways that we might be able to determine business flight: from Dunn and Bradstreet; change of address records, which would be very expensive to get and track; to Board of Equalization records, and other records that we might have at the state. And we have not been able to come up with a good, solid measure where I could sit here and tell you what I think is the base line.

I guess I take the attitude that, as I've tried to look at the business climate issues with the bottom line approach, and say if we do know that what is happening to California companies is costing more, then whether they're leaving the state or not, we have a competitiveness problem.

Secondarily, it's one thing to pack up and move a plant and employees out of state, and it's quite another thing, as this economy turns and businesses have the opportunity to make what this industry calls "greenfield decisions" about where they're going to locate those expansions, so I guess although I think it would be ideal to have such a number, what I've concentrated on is where we know we're not competitive in the public policy arena, we need to strive to become competitive. And whether it's one business in four, as one of the Business Roundtable surveys said, or one in twenty, it's a problem that we should really work to respond to.

I'm real sorry that I can't give you a more definitive answer on numbers.

SENATOR PETRIS: Well, if you ever get a list, I'd love to see it.

MS. WRIGHT: All right.

SENATOR PETRIS: Maybe you can work through the local Chambers all over the state. A Chamber knows when a company leaves town. Some of the more vigorous ones, when they hear about the plans, try to dissuade them from leaving.

MS. WRIGHT: Well actually, one of the things that we've tried to do is work with the utilities, because when utilities are shut off, it's usually a sign that something has

1 happened, or when the utility is transferred.

2 But again, it is not a comprehensive list, and it's

3 pretty labor-intensive to consider following through to

4 determine the reason.

5 SENATOR PETRIS: I'm curious about the Leggo Park.

6 Is there one in Virginia now?

7 MS. WRIGHT: No, this will be their first United

8 States expansion of a family park.

9 SENATOR PETRIS: There aren't any in the U.S. at this

10 time?

11 MS. WRIGHT: No. There's one in England that they

12 are just now building, and this is their first U.S. expansion.

13 SENATOR PETRIS: I'd sure like to know how they

14 figure it could be more profitable in five months in one place

15 than twelve months somewhere else, based on that corporate tax.

16 There must be more to it than that.

17 MS. WRIGHT: I'm sure there is more to it than that,

18 and believe me, we are trying to sort it out so that we can

19 potentially provide a challenge to their assumptions.

20 SENATOR PETRIS: What part of Virginia are they

21 looking at?

22 MS. WRIGHT: Prince William County in northern

23 Virginia, between I-95 and Route 1, near Woodbridge. It's in

24 the greater metropolitan area of Washington.

25 SENATOR CRAVEN: It's within, what, 25 miles of

26 Washington?

27 SENATOR PETRIS: Yes, it'd be close to Washington.

28 MS. WRIGHT: Right.

SENATOR CRAVEN: Which can get cold as Alaska.

[Laughter.]

MS. WRIGHT: Actually, we're hoping they will dig up a few Civil War bones and find out they can't even build on the site.

[Laughter.]

SENATOR CRAVEN: It gets very, very cold.

SENATOR PETRIS: They must be projecting a huge number of people in those five months.

MS. WRIGHT: Actually, they have looked at the demographics within 25 miles and 125 miles, the level of tourism that comes into Washington. We've done the same thing here in California.

The numbers are roughly equivalent, except that as the range broadens, California does better.

SENATOR PETRIS: Well, I would imagine we'd draw a lot more people when we've got seven months more than they have. It should be an enormous difference.

That's why they didn't put Disneyland in Prince William County, you know. They might wind up going there, but as of now --

SENATOR CRAVEN: Disneyland is a little further in; it's called Washington.

[Laughter.]

MS. WRIGHT: Well, let me tell you, in fact, Disney has been helpful by providing us some of their marketing data on visitor demographics, in addition to the tourism studies we've conducted, because they don't view this park as a direct

competitor.

So, these kinds of projects are collaborations, and they tend to be very instructive as to what the competitive issues are.

And if you have good ideas that you'd like to contribute to this Leggo proposal process, I would welcome them.

SENATOR PETRIS: Thank you.

MS. WRIGHT: We want to win this one.

Right, Senator?

SENATOR CRAVEN: Yes, absolutely. It's been a very, very interesting thing. I guess Carlsbad has as much chance as the other site has.

MS. WRIGHT: It's a much more beautiful site, I think.

SENATOR PETRIS: Especially in the winter.

SENATOR CRAVEN: I don't know the exact site. I'm quite familiar with Virginia, and also the weather there, because in the winter time, we used to jump into the Potomac River there to learn landing exercises, and in the summer time, they took us on what was called the Pipeline Trail, which was where the power lines were. They were up hills and down hills. And I'll tell you, it was excruciating. People would say, "Send me over seas. I've had enough of this." It was worse.

Well, did you mention the fact that you had been to Denmark?

MS. WRIGHT: Yes.

The officials in Carlsbad and San Diego County and the San Diego Economic Development Corporation, which are all

part of the Team California partnership on this proposal -- which, I should point out, is not being led by my Agency; strongly supported, but really being led by the City of Carlsbad, which is exactly the idea of Team California -- and I did have occasion to spend 24 hours in Billen, Denmark and visit the park. And it is -- it would be a great asset to California, I'm absolutely convinced. It has a strong educational component to it, and I think California would be very good for Leggo.

I was raised in the Washington, D.C. area, so I, too, know the California advantages.

SENATOR CRAVEN: She was also raised in the Tokyo area, having spent some time there.

MS. WRIGHT: Right.

SENATOR CRAVEN: So, she's had a very well rounded education. Certainly, I think, is very well qualified.

Senator Beverly.

SENATOR BEVERLY: There is an attraction to that five-month work year.

[Laughter.]

SENATOR BEVERLY: Some people say we already have it. I don't know.

MS. WRIGHT: It's not a twelve-month pay check, though.

SENATOR BEVERLY: Well, for somebody it's just as profitable.

But I'm pleased to note that both of these nominees today are graduates of TRW, one of our premier employers in the state.

I'm pleased to move we recommend confirmation.

SENATOR CRAVEN: Very well.

Any further discussion? There appears to be none. Call the roll, please.

SECRETARY WEBB: Senator Ayala.

SENATOR AYALA: Aye.

SECRETARY WEBB: Ayala Aye. Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Beverly Aye. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Petris Aye. Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Craven Aye. Senator Roberti.

Four to zero.

SENATOR CRAVEN: The vote is four to zero; recommended to the Floor.

Congratulations. Thank you. We're sorry to have kept you waiting so long.

MS. WRIGHT: Not at all. Thank you very much.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 4:25 P.M.]

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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of June, 1993.

EVELYN J. MIZAK
Shorthand Reporter

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SENATE RULES COMMITTEE

STATE OF CALIFORNIA

HEARING

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, JUNE 30, 1993

2:00 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chair

SENATOR WILLIAM CRAVEN, Vice Chair

SENATOR ROBERT BEVERLY

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR RUBEN AYALA

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

JERRY B. EPSTEIN, Member
California Transportation Commission

SANDRA R. SMOLEY, Secretary
State and Consumer Services Agency

JOHN CANFIELD, Legislative Chair
Department of California Veterans of Foreign Wars

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CHAIRMAN ROBERTI: I'm advised that Mr. Epstein has a family emergency, so because of that we'll take Mr. Epstein up first.

Jerry B. Epstein, Member of the California Transportation Commission.

Mr. Epstein, we'll ask you what we ask all the Governor's appointees, and that is why you feel you are qualified to assume this position?

MR. EPSTEIN: Thank you, Senator.

I was confirmed by this honorable board approximately a year and a half ago. Since then, and before coming to this board, I was a member of the Board of Airport Commissioners for the City of Los Angeles and involved in transportation matters there. I've advocated a train from LAX to Palmdale, which I think should be our largest airport to relieve LAX.

Since being on the board, I was given the assignment of Project Delivery that I hope helped in some way, and with Senator Bergeson's SCR 72, the investigation on CalTrans and so forth, I'm on that audit committee.

And I feel very positively that transportation can be one of the means to get our state back in the black again. I am a tremendous advocate both of rail and highway.

CHAIRMAN ROBERTI: Very good.

Are there any questions of Mr. Epstein?

Is there anyone here in opposition to Mr. Epstein's appointment?

SENATOR CRAVEN: Mr. Chairman, I would like to move.

CHAIRMAN ROBERTI: Senator Craven moves Mr. Epstein's appointment to the Floor.

The voters last year rejected the one billion dollar rail bond measure.

MR. EPSTEIN: Prop. 156, yes, sir.

CHAIRMAN ROBERTI: I guess there'll be an attempt to go one more time with the bond measure, but do you have any contingency plans --

MR. EPSTEIN: Well, I think --

CHAIRMAN ROBERTI: -- in the case we don't win that one?

MR. EPSTEIN: Well, we are trying to do everything that we possibly can to prioritize. We're hoping that this time -- we're hoping that the Legislature will advance such a proposition again to give the people of our state the opportunity to vote again. And I think this time, I think a concerted effort should be made, much more than the other time, to make people aware of exactly what we want to do and how urgent it is that we do have the means to continue on the program.

CHAIRMAN ROBERTI: There have been some complaints that CTC is unduly influenced by the Governor's Office. We have a 1990 report of the Senate Advisory Committee on Cost Control in State Government sort of indicating that.

The idea of CTC is that it act independently also of its appointing authority -- it was set up to act independently of the Legislature -- so that these decisions are made

independent of the Legislature.

Do you have any observations, rejections, or whatever, of that report?

MR. EPSTEIN: Yes.

I have been on the Commission for almost two years. I have never had a call from the Governor, who did appoint me. On some very controversial issues, he has always left it up to me. I think it's a very good thing.

I have been on commissions for the last 23 years, and the people that compose this commission, I think, are of the highest quality of any commission that I've served on, as well as the CTC staff. I've never seen a more hard-working staff, whether in the public sector or in the private sector.

I believe that an independent CTC is vital, vital -- I underline that -- being able to advise the Senate and the Assembly as to what we find. Case in point, a good case in point, I think, is the audit that we're having right now, that those of us are tremendously interested in, in seeing how we can improve a $6.2 billion budget with CalTrans.

So, I have never been unduly influenced by anybody.

CHAIRMAN ROBERTI: So, you're saying the Governor nor anybody --

MR. EPSTEIN: In the staff --

CHAIRMAN ROBERTI: -- in the staff has --

MR. EPSTEIN: No, sir.

CHAIRMAN ROBERTI: It's one thing, I think, if they would appear before the Commission; something else if you've got an ex parte communication. So, I'll take your word for it.

Are there any other questions of Mr. Epstein?

Senator Craven's motion is before us. Secretary will call the roll.

SECRETARY WEBB: Senator Ayala. Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Beverly Aye. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Petris Aye. Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Craven Aye. Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is four to zero; confirmation's recommended to the Floor.

Congratulations, Mr. Epstein.

MR. EPSTEIN: Thank you very much, Senator.

CHAIRMAN ROBERTI: We will return to the regular order.

[Thereupon legislative agenda items were acted upon by the Committee.]

CHAIRMAN ROBERTI: Now back to Sandra Smoley, Secretary of the State and Consumer Services Agency.

We're all familiar with you, but we've got to ask you the same question: why you feel you're qualified for this position?

MS. SMOLEY: Yes.

Many of you know that I was on the Sacramento County Board of Supervisors for 20 years. It's been a fantastic training ground for the job that I've just started. So many of

my departments have to do with things I dealt with at the County. I dealt with General Services issues, procurement, contracting, consumer issues, Building Standards Commission, Fair Employment and Housing, State Fire Marshal.

I was able to hit the road running the minute I got there. Now I just have to think statewide versus Sacramento County.

But I really feel my 20 years really gave me a leg up in being able to be effective in the job that I have.

CHAIRMAN ROBERTI: Very good.

Is there any question of Ms. Smoley?

I think we're all delighted to see you in this position.

MS. SMOLEY: Well, thank you. I am very pleased to be here also.

CHAIRMAN ROBERTI: Having read about you for many years, as you do about us, we feel you're qualified, so I don't think we have to ask too many questions, but if somebody wants to ask them, please do.

Senator Petris.

SENATOR PETRIS: I'd like to make the motion, but I have a couple of questions.

CHAIRMAN ROBERTI: Good.

SENATOR PETRIS: As I discussed with you in my office, some people are unhappy about the percentage of veterans that are hired by the Department, and some veterans who aren't very friendly to the veterans, for some reason.

I wondered what your policy recommendation is

regarding hiring practices relating to, first of all, the statutory requirement that says we give priority to veterans for employment within the Department, and the second, hiring qualified minorities, and so forth. Can you give us a comment on that?

MS. SMOLEY: Yes, I can.

I went back and checked after we had our meeting. And of the 13 management people and CEAs, which are considered management also, of the 13, 11 have served in the military. There were 2 that have not.

I do believe that veterans -- being a veteran should be a priority. I do support that. And obviously, I would push to have the people who are there, if they're going to work in the Department of Veterans Affairs, they should be at least partial to veterans and be supportive of them.

As far as minority, are you talking about MBE/WBE, or are you talking about --

SENATOR PETRIS: Racial minorities, ethnic minorities.

MS. SMOLEY: In the Department of Veterans Affairs?

SENATOR PETRIS: Yes.

MS. SMOLEY: Well, they have many. Of course, the new Department of Veterans Affairs' Director is Hispanic, Colonel Vargas. And in top management, there are Hispanic and also black, and I, of course, support equal opportunity and would be watching that very closely.

SENATOR PETRIS: I've also had a question regarding procurement practices. I don't know which part of your shop

that falls under.

MS. SMOLEY: Department of General Services.

SENATOR PETRIS: Have you had any, in your limited time there, any experience of complaints relating to procurement practices?

It's alleged here in a note I got from a colleague that -- inquires as to what your program is for improving our procurement practices. I'm not too familiar with it.

MS. SMOLEY: Okay. There are three areas that I really want to spend time on, and I've been very aggressive on, and that's asset management, procurement, and also Consumer Affairs.

Procurement, I believe, needs to have a new look. I want to look at it to give the state wide options. I feel that we need to look at multiple awards. I'm very open in this regard.

We're trying right now to to hire a new procurement person. I want somebody who's willing to look at things and maybe do things a little differently than we've done in the past. I'm going to be very aggressive and personally follow this issue.

I think there are some improvements that can be made, both cost effective for the state, and also allowing more people to have an opportunity to work with the state.

So, I will be personally following this after we are able to hire somebody. The position is vacant now. I mean, we have somebody acting, but, I mean, the person that's going to be in procurement, but I share your concern in that regard. This

is one of the exciting areas that I really think we can make some very innovative changes that are going to be positive for the state.

SENATOR PETRIS: As a former Supervisor who's been through a lot of budget battles at the county level, and you're now seeing the budget battles here, you're being called on to do some restructuring, down-sizing, whatever the current fad is in describing these things.

Do you want to comment on how you're tackling your part of the budget problems?

MS. SMOLEY: Well, in asset management, you know, I really think that we can get some more money and do things better at the state. We have seven regional plans, one of which is in your area, Senator, San Francisco/Oakland.

We think we can save the state money on leases and some of the purchases. We think we can be a part of providing jobs in your areas. We think we can be a part of doing our part in trying to turn the economy around, and that's an area that I think all of us are concerned about.

I think our asset management plan is very aggressive. We have seven regional plans, and we are getting fantastic response. In Oakland/San Francisco, the Governor's plan is being carried by the Speaker, so it shows that we have bipartisan support in that regard.

SENATOR PETRIS: His plan for the East Bay -- there are two bills -- his plan for the East Bay I'm carrying, I'm happy to say.

MS. SMOLEY: Yes.

SENATOR PETRIS: There's a report on that, and the report to the Governor was excellent in consolidating our offices and saving a lot of money.

MS. SMOLEY: Exactly. So, that part.

Also, we're doing some consolidation in Consumer Affairs. We just are looking to consolidate the Funeral Boards, Funeral Directors and Embalmers and Cemetery and Crematorium. We also have consolidated Barbering and Cosmetology. We're looking at streamlining those boards. But more importantly, we're looking at making them consumer-oriented, protecting the consumer.

I think in California, the consumer has to be assured that their interests are protected, and we cannot have these boards and commission protecting special interests. And I've been very aggressive in that, putting the consumer back in the Department of Consumer Affairs.

SENATOR PETRIS: That's great.

Mr. Chairman, I want to acknowledge publicly your very, very substantial help that you gave to the veterans. I'm talking about the seven or eight fire victims in the Oakland/Berkeley Fire.

They were really getting roughed up by the Department. Until you stepped in and really knocked some heads together and reminded them of their mission, we weren't getting very far.

I want you to know that all the veterans involved that I've met with from my area are very pleased and grateful for the help that you gave them.

MS. SMOLEY: Thank you.

SENATOR PETRIS: I am, too.

MS. SMOLEY: Thank you very much.

SENATOR PETRIS: I hope you keep an eye on that part of your shop.

MS. SMOLEY: Believe me, I will.

SENATOR PETRIS: Thank you, Mr. Chairman.

CHAIRMAN ROBERTI: Senator Craven.

SENATOR CRAVEN: Who sets the policy for some of the departments within your purview? Is HCD a part of Consumer Affairs?

MS. SMOLEY: No, no. That is in Business and Transportation.

SENATOR CRAVEN: Well, let's get back to the areas in which you have been involved in.

Do these independent departments, or whatever you want to call them, set their own policy, or is that set by the Legislature?

MS. SMOLEY: Now in which area, Consumer Affairs?

SENATOR CRAVEN: You name it.

MS. SMOLEY: Well, in Consumer Affairs, we have some commissions that set policy that are independent, hire their own executive officers. They do have a say.

We are the umbrella agency. The Department of Consumer Affairs is over these boards and bureaus, but we have less to say over their policies, per se, but we do have the capability of making some input in that regard.

SENATOR CRAVEN: If you had, and this is

hypothetical, but if you a group who had no commission, or advisory board, or whatever you choose to call them, would they then have the ability to set policy?

MS. SMOLEY: No. In most instances, I would say, no. They bring policy matters to me as the Agency Secretary. Department people bring forth any policy to me, and I have to approve whatever that policy is.

Now, in some instances, like in General Services, and in some instances in the Department of Consumer Affairs, the Director has some statutory capabilities to make some decisions on their own.

But I'm working with my departments to be very close to the Agency. I want to know about those things, because I'm a little bit more of a hands-on Agency Secretary. I think it's important that we work together and they keep me posted as to the activities they're doing.

SENATOR CRAVEN: Well, as it relates to your area of operation, if the department had a conflict with the Legislature, that would in time be funneled up to you for decisions as to what seemingly was the appropriate way to handle it?

MS. SMOLEY: That is correct. But once in a while the departments get over and speak against an issue that maybe the Agency disagrees with.

SENATOR CRAVEN: That's not once in a while. That's more frequent than once in a while. That's why I'm asking these questions.

MS. SMOLEY: Well, I'm aware of that, and I am

working with my department people to say, "Hey, you come to me. Let's work this out." It does no good for us to be coming to you and giving you different opinions here. And so, I'm aware of that issue.

I'm very open to work with that, and I'm being pretty strict with them, saying, "Let's get this policy together here and go together," versus I think differently and they think differently.

SENATOR CRAVEN: I'm very confident in you and your ability to do that. I probably have more confidence in you, because I've known you for a couple of decades and the work that you've done, than I have in some of the other people who have approximately the same type of position.

But I've gotten to a point where I find that the departments are saying what I should do. And I would raise a solemn resentment toward that. And I want to make a correction there, because I don't think that's the way the system is supposed to work.

MS. SMOLEY: It's my opinion that you're elected by the people. And by the fact that you're elected by the people, that gives you the capability to speak on issues.

SENATOR CRAVEN: Well, that's what I'd like to think, but some of these people come in, and they're the sine qua non of whatever, and I have a little problem. No, I don't; I take that back. A lot of problem.

MS. SMOLEY: A lot of problem. I can understand that.

SENATOR PETRIS: Mr. Chairman.

CHAIRMAN ROBERTI: Senator Petris.

SENATOR PETRIS: On that point, when I referred to the fire victims, she reminded the agency in charge, which just happens to be the CAL-VET people, of what their statutory mission was. And they were bucking the statutory mission until she turned them around.

So, my one experience with her has been very positive on that very issue. That's why I was pleased and impressed.

SENATOR CRAVEN: And you feel, I'm sure, Nick, as I do, it's very important that we get that squared away.

SENATOR PETRIS: That's right.

MS. SMOLEY: Thank you.

SENATOR CRAVEN: No condemnation of you, Supervisor.

CHAIRMAN ROBERTI: Please come forward.

MR. CANFIELD: This is my representative for 20 years on the Board of Supervisors, so I'm very pleased that she is here.

MS. SMOLEY: Thank you.

MR. CANFIELD: And even when I appeared before the Board, she never stood up and cheered when I said anything, but on the other hand, she did not boo me, so that's in her favor.

[Laughter.]

MR. CANFIELD: I am John Canfield, the Legislative Chairman for the Department of California Veterans of Foreign Wars.

And we had a convention down in Ontario last weekend, and there were a couple of resolutions approved by the membership pertaining veterans preference points, entry

examinations, and the Veterans of Foreign Wars delegates are very concerned about the hiring of non-veterans in the Department of Veterans Affairs. And I cannot say that this is a large number, but there have been some positions filled by non-veterans. And there is a statute which states that, quote,

"Whenever possible, preference shall be given to veterans for employment in the Department of Veterans Affairs."

And my understanding of Ms. Smoley's comments is that she has no objections to veterans preference, and we would just like to ask Ms. Smoley if my interpretation is correct?

Do you have any concerns about it?

MS. SMOLEY: I have no problem with that. I told you that I did check on the top thirteen. Eleven of the thirteen have served in the military.

MR. CANFIELD: Mr. Chairman, that is the concern that we have. And hearing the answers from Ms. Smoley, we certainly are not objecting to her appointment.

However, I would like to point out that we will be watching what does take place, and I will remind my former representative that she stated before the confirmation committee that she understands the concerns of the veterans.

MS. SMOLEY: Here's my card. Call me up.

MR. CANFIELD: I should say, I already have a bunch of these.

MS. SMOLEY: But a new address.

MR. CANFIELD: Thank you very much, Mr. Chairman.

SENATOR PETRIS: Question.

CHAIRMAN ROBERTI: Senator Petris.

SENATOR PETRIS: I'd like to ask the witness what's the significance of VFW 1999? Is that the post number?

MR. CANFIELD: That Post 1999.

SENATOR PETRIS: It's not a date of something to happen in the future?

[Laughter.]

SENATOR PETRIS: Is that a local post in Sacramento?

MR. CANFIELD: This is Sacramento post. In fact, we are members made up of people who have either worked in the Capitol or in agencies around the Capitol.

SENATOR PETRIS: You're kind of a government chapter of the VFW.

MR. CANFIELD: In fact, it started, Mr. Chairman, as a state employee VFW post, and we have now branched out to a public employee post, and even further, now we're becoming a general VFW post, but we do get involved in legislative matters primarily because we have worked around the government.

SENATOR PETRIS: Thank you.

CHAIRMAN ROBERTI: Thank you very much.

MS. SMOLEY: Thank you for coming down.

CHAIRMAN ROBERTI: Do I hear a motion?

SENATOR CRAVEN: I'll move.

CHAIRMAN ROBERTI: Oh, Senator Petris already --

SENATOR PETRIS: May I join --

CHAIRMAN ROBERTI: Senator Petris gets the move.

MS. SMOLEY: Thank you.

CHAIRMAN ROBERTI: Secretary will call the roll.

SECRETARY WEBB: Senator Ayala. Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Beverly Aye. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Petris Aye. Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Craven Aye. Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is four to nothing; confirmation is recommended to the Floor.

Congratulations.

MS. SMOLEY: Thank you very much.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 2:35 P.M.]

--oo0oo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of July, 1993.

EVELYN J. MIZAK
Shorthand Reporter

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STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, JULY 7, 1993

2:05 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chair

SENATOR WILLIAM CRAVEN, Vice Chair

SENATOR RUBEN AYALA

SENATOR ROBERT BEVERLY

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

LEO BURKE, Member
California Veterans Board

SENATOR PATRICK JOHNSTON

PORTER MERONEY
Chief Deputy Director
Department of Veterans Affairs

GEORGE MANESS, Chair
California Veterans Board

P. GREGORY CONLON, Member
Public Utilities Commission

SENATOR REBECCA MORGAN

JANICE WILSON, President
State Board of Accountancy

DENNIS CHACONAS, Superintendent
Alameda Unified School District

APPEARANCES (Continued)

PETER ARTH, JR., General Counsel
Public Utilities Commmission

SENATOR HERSCHEL ROSENTHAL

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P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN ROBERTI: Governor's appointees appearing today, Leo Burke, Member of the California Veterans Board.

Mr. Burke, we'll ask you what we ask all the Governor's appointees, and that is why you feel you're qualified to assume this position?

MR. BURKE: Thank you, Mr. Chairman for this opportunity to address the Committee.

As a young man, I joined the United States Marine Corps and saw service in World War II. Concern for veterans and their well being has been a significant focus of my life for nearly half a century.

I am a past State Commander of the American Legion, and also been elected to state membership to serve as California's sole representative on the Legion's National Executive Committee. The Executive Committee is the policy body for the 312 million member organization nationally. I have also served in 15 other appointments at the national level of the American Legion. Currently I am a member of the National Commission on Foreign Relations for the American Legion. I have been a member of the Veterans of Foreign Wars for 20 years and served for seven years as President of the D.A.V. Charities, a component of the Disabled American Veterans.

I was appointed by former Governor Jerry Brown to the San Joaquin County Fair Board, and I was elected Trustee for 17 years of the Delta Community College District. The District serves 25000 students and has a budget of $60 million annually.

I have received over 1,000 community service awards in my home city of Stockton and currently sit on its Planning Commission.

The charter of the Veterans Board requires it to determine policy for all operations of the California Department of Veterans Affairs, review and set interest rates for the CAL-VET home loan program at least once annually, and to act as an appeals body for those California veterans who believe that they have been denied a benefit improperly. The Board meets on a monthly basis to discharge these duties.

However, each member of the Board also performs another duty which, while not expressly enumerated in our charter, is as important as those formal responsibilities. Throughout each month, Board members attend a wide variety of meetings with rank and file California veterans. We bring to them information about how the Legislature and Administration are dealing with issues that have an impact on them, and we bring back to these halls of government those things that the veterans believe should be dealt with.

I am proud to have been asked by two Governors of California to serve on this Board, proud to have been previously confirmed in that service by this Committee. I am serving now as a member of the Board and have in the past served as its Chairman.

I have served on the Board when its relations with the Department of Veterans Affairs have been contentious and of questionable productivity, and I have served at a time when the relationship has been cordial and productive. I am pleased to note that from Colonel Ugalde, Admiral Hacker, and now Colonel

Vargas, the relationship between Board and Department has steadily improved.

The people of our state and the Members of this Legislature consider attention to those who have served our nation in uniform is to be great and important with both the Department of Veterans Affairs and the California Veterans Board. We were created to deal with issues important to them. We act as a check and balance system for one another. The Board is neither the Department's adversary, nor is it an apologist. In order for the needs of veterans to be served appropriately, a working partnership must exist. The partnership must recognize the legitimate sphere of each member, and each member must work to maintain a relationship that creates consensus more than conflict. As you know better than most, Mr. Chairman, public consensus is only achieved after much attention and effort has been given in private to resolving conflicts.

We are a citizens' Board, Mr. Chairman. We do not necessarily bring technical expertise to this post. We bring to it our own military experience and those conditions we have encountered ourselves as veterans. As citizens and veterans, we bring to government an empathy for our comrades that may not always be present to those public servants charged with serving our interest in a professional capacity.

I know I speak not only for myself but also for my colleagues when I say that our Board works to maintain a state of mind that prefers to decide in favor of the veterans in all cases where there is even the slightest justification of doing so.

I believe I am qualified to continue in my position on the Board because my career as both public official and a private advocate has provided me the experience that I will need to combine a knowledge of process, an awareness of public sentiment, in order to assist in the formation of policy that lends itself to useful execution.

In a time of diminishing revenues and increased expectations, I believe my talents can continue to be used in the service of my bother and sister veterans and their dependents. I wish to continue my service on the Board, and I ask for your support so that I may.

Thank you, sir, for your time.

CHAIRMAN ROBERTI: Thank you very much, Mr. Burke.

Is there any discussion or debate? Is there any opposition? Any other witnesses?

SENATOR PETRIS: I have some questions, if I may.

CHAIRMAN ROBERTI: I think Senator Johnston wants to speak to the appointee.

SENATOR PETRIS: He's your constituent.

SENATOR JOHNSTON: Sorry, Mr. Chairman and Members. I was in conference committee.

I just wanted to say that the nominee, Mr. Burke, has been a long-time friend of mine and constituent and contributor to the community and certainly to matters concerning veterans, both in organizations that serve veterans as well as helping me in some years ago in really bringing to my attention a gap in the law, or an inadvertence, that made it very difficult for those disabled veterans who needed adjustments in their

property, in their house or new house under CAL-VET could obtain that. And so, Mr. Burke was exceedingly helpful on behalf of veterans in getting the law changed, with your support as well, Members.

So, I enthusiastically support the nominee, and I hope you will confirm him to this position.

CHAIRMAN ROBERTI: Thank you, Senator.

Are there any others here in support? Do you want to come forward and indicate your name and the organization that you represent.

MR. MANESS: Gentlemen, my name is George Maness. I'm presently the Chairman of the California Veterans Board.

And it is with pleasure that I'm here before you today in the Committee to endorse Mr. Burke for his confirmation on the Board.

Mr. Burke is presently a member of the Board and past Chairman of the California Veterans Board. And it was with confidence that I, as Chairman, appointed Mr. Burke to Chair the Legislative Committee and the policy committee of the Board.

My association with Mr. Burke dates back beyond my appointment to the Board in 1990. As an active member of numerous veterans organizations, and as California Department Commander of Am-Vets, I was impressed with Mr. Burke's commitment to communicate with the veterans of California through correspondence or personal contact.

Since my tenure on the California Veterans Board, Mr. Burke has been not only a mentor, but also a friend to admire. Leo Burke is that special type of American who is willing to

service -- to serve and sacrifice whenever his nation, state or community calls him into service: the U.S. Marine Corps, World War II; elected Trustee, Stockton Community College, 17 years; and the California Veterans Board, 7 years. And it's for sure that money was not the incentive, but rather loyalty and concern for others was and is his only motivation, not unlike the motivation you gentlemen possess as representatives of the people.

Mr. Leo Burke is a catalyst on the Board. His knowledge and commitment to veterans never falters, nor does he ever let the rest of the Board members forget our purpose.

I realize what I've said sounds flowery, but I can also assure you that I don't speak with forked tongue. I mean what I have said, so give me just a few seconds to elaborate the facts. A, Leo Burke's tenure and continued tenure on the California Veterans Board helps guarantee continuity. B, Leo Burke's close association with individual veterans and veteran groups enabled the Board to be more responsive to the needs of the California veteran. C, the total commitment Leo Burke has demonstrated to his community of Stockton, the State of California, and as a uniformed member of the U.S. Marine Corps warrants confirmation not only as a reward for his achievement and dedication, but because Leo Burke is the right man for the right job.

It with real pleasure, and I do want to re-emphasize that Leo is a strong clog on the Board, and we'd appreciate your confirmation.

Thank you.

CHAIRMAN ROBERTI: Thank you very much.

Senator Petris has questions.

SENATOR PETRIS: Mr. Burke, I've heard some good things about you from old friends and supporters. I've also heard some questions of concern, so I want to go into those.

The witness just gave an account of how important it was to help the veterans and carry out the mission of the Board, and there are questions in a few areas that I'd like to give you a chance to clarify. They relate to the actions of the Board itself and your votes in particular on certain matters.

One of them has to do with a statute that we enacted in the '80s to create -- I've lost track of the date; it's been a few years -- where we enacted a statute intending to create a second home for California veterans down in Southern California, so we wouldn't just have Yountville.

MR. BURKE: Yes, sir.

SENATOR PETRIS: And the most the Board has been able to come up with are some nursing-type homes instead of a home comparable to Yountville.

It seems to me that's a failure to carry out the legislative mandate which was intended to help the veterans.

Can you shed some light on that for me?

MR. BURKE: I believe, Senator, sir, you're referring to the first committee that was appointed on the veterans home south?

SENATOR PETRIS: Well, I'm referring to AB 200, carried by Assemblyman Clute, who represented part of the southern state, and the bill was passed in 1989 to establish

one or more additional veterans homes in Southern California, since we don't have any at all at the present time. One of the other Assemblymen who worked hard on that legislation and strongly supported it wrote to the Director of the Department in February of 1990, requesting information about a diversion from a veterans home to creating six nursing homes instead. So, that's been a controversy ever since.

So, I'd like you to explain to me, as one who's been on the Board a long time and also has been Chairman, number one, why hasn't the Board moved in the direction of carrying out the mandate of the statute? And why has it diverted that toward nursing homes, which are not provided for in the statute?

MR. BURKE: Well, sir, to the best of my knowledge, unless I've been quoted out of context, I under no circumstances would ever support a nursing home for -- a nursing home for veterans.

Now, that might have been in a bill, sir, and in order for us to get it started, I feel that and I've always taken the position that we should -- or we should have the same services as Yountville, except for acute care. In acute care, the homes south would be located close to a V.A. center.

As far as a nursing home, I wouldn't support something like that, sir, alone. Now, again, with -- certain times we've taken action to get something moving, but in the other components of the bill, I believe, it was as you point out, from one to six homes. It could be, with the probably 450 residents -- but again, it was my understanding it has a level of care, but as far the other, I couldn't support that, sir.

SENATOR PETRIS: Well, the information I've been given -- I haven't read the statute -- there wasn't anything about nursing homes. It was a new, full veterans home similar to Yountville, serving the same purpose, with a much larger number of residents than a small nursing home would have.

MR. BURKE: Yes, sir. Well, it was --

SENATOR PETRIS: So, the first question is, why hasn't the Department moved in the direction? Why don't we have a veterans home now in L.A., since we passed a law in '89?

MR. BURKE: Well, sir, we do have one now. I thought you were referring to their first bill. It's been before the elected officials to have a home in Barstow. And there was a special commission appointed for this job, and we will have a home in Barstow in about two years with -- and it's been passed by this body. We've received the funding from the V.A., 20 million, I believe.

SENATOR PETRIS: The federal?

MR. BURKE: Yes. The federal is the first 20 million, and the state, I believe, sir, and a report is on the Chairman's desk on this home, sir.

SENATOR PETRIS: Can you tell me --

MR. BURKE: With all levels of care except acute. Same quality of life.

SENATOR PETRIS: Is that under construction now?

MR. BURKE: No, sir. We expect it to be. It's up to, certainly, elected officials when you -- in your infinite wisdom, but in a year, or possibly a year, it'll break ground on it.

SENATOR PETRIS: In about a year?

MR. BURKE: Yes, sir.

SENATOR PETRIS: Well, I hope that estimate is better than the normal estimates that we get. You know how those things are.

MR. BURKE: Yes, sir.

SENATOR PETRIS: You're told a year, and you're lucky to get it in three years.

Do you have reason to believe it'll be a year for sure?

MR. BURKE: Yes, if I could ask the technical staff, I'd like to have Porter Meroney, please, to deal with that.

SENATOR PETRIS: Sure. I'd like to get that information.

MR. BURKE: Thank you, sir.

MR. MERONEY: Thank you.

I'm Porter Meroney. I'm Chief Deputy Director of the Department of Veterans Affairs.

SENATOR PETRIS: Can you speak up a little, please?

MR. MERONEY: Yes. I'm Porter Meroney. I'm Chief Deputy Director of the Department of Veterans Affairs.

Mr. Burke is quite correct. We have now a plan in place that will enable us to begin construction on a veterans home in Barstow, hopefully, by the end of this year, but most certainly within the next twelve months.

As Mr. Burke indicates, we have the funding, the 65% funding tied up. The U.S. D.V.A. has committed to make that funds available. We have in place a statutory approval to

arrange a loan for the state's start-up costs, and additionally to issue some revenue bonds which we'll need for the state's 35% share, and then we'll plan to pay those bonds off through the normal operating budget, the annual appropriation for the home.

But we're, as Mr. Burke indicates, we're very hopeful that we'll have this open within the next two years.

SENATOR PETRIS: So, you expect construction to start no later than 12 months?

MR. MERONEY: Yes, sir.

SENATOR PETRIS: You expect that it won't take more than a year to build?

MR. MERONEY: It should take around a year, sir.

SENATOR PETRIS: What's the capacity?

MR. MERONEY: It will have room for approximately 400 veterans.

SENATOR PETRIS: How many are at Yountville?

MR. MERONEY: Currently the census at Yountville is around 1150.

Now, this Barstow facility is the first of what we plan to be at least three other sites.

SENATOR PETRIS: That was my next question. You're going to have three others at least the same size as --

MR. MERONEY: Yeah, comparable size.

SENATOR PETRIS: -- Barstow? So the total residents will be comparable to the 1150 up north?

MR. MERONEY: Yes, sir. When we have all four, it will be around 1600, which will be slightly more than the capacity at Yountville.

SENATOR PETRIS: And what's the story on the nursing homes? Are there nursing homes being built or planned?

MR. MERONEY: No, sir. These are not nursing homes. This is the full level of care, short of acute care. In other words, a healthy veteran would come in and would live at the veterans home, and as he ages, and his need for a higher level of care is there, then we'll progressively advance him into those higher levels of care.

But we would not expect this to be a, quote, "nursing home". This is a home where the veterans will be making their -- they will be treated as residents, very similar to what we do in Yountville.

SENATOR PETRIS: There isn't any separate effort for six nursing homes?

MR. MERONEY: No, sir. These are homes, not just nursing homes.

SENATOR PETRIS: The qualifications for entry are the same as Yountville?

MR. MERONEY: Yes, sir.

SENATOR PETRIS: So it's really a parallel to Yountville in Southern California? That's what the statute intended.

MR. MERONEY: That is correct. It's virtually the same level of care, the same types of services, with the exception of acute care, except that there will be four separate sites rather than the one site in Yountville.

SENATOR PETRIS: Thank you.

MR. MERONEY: Thank you.

CHAIRMAN ROBERTI: Senator Ayala.

SENATOR AYALA: Mr. Burke, what do you see as the major issues in California for veterans today?

MR. BURKE: I see -- Senator, sir, I believe it's funding and finances. I think that the veterans organizations are going to have to go out and work a little harder on fundraisings and so forth, because the budget --

SENATOR AYALA: Fundraising for what purpose?

MR. BURKE: For the good of the veterans, for the disabled veterans and their families.

SENATOR AYALA: Disabled veterans.

MR. BURKE: Yes, sir.

SENATOR AYALA: That is, as you see it, the major issue in California?

MR. BURKE: Yes, I do.

SENATOR AYALA: And you as a member of that Board, how are you addressing that issue?

MR. BURKE: From the D.A.V. Board, sir, well, we're -- I also belong to a D.A.V. Charities Board, and we raised in the last 15 years $1,500,000. And we probably put, oh, maybe 100,000 went to Yountville, a lot has went [sic] to the V.A. A lot has went to scholarships for people to go to school, sir. And I think this is the area we're going to have to address in the future.

SENATOR AYALA: We get a lot of letters from the Napa Veterans Home. There's something wrong. I don't know what's wrong with that operation there.

Are you familiar with that problem? Is it something

that can be addressed quickly? What is the problem at Napa Veterans Home?

MR. BURKE: Senator, sir, I visit there quite often. When I receive a complaint from one of the residents and so forth, I channel it through the Department of Veterans Affairs, and it's handled in that direction. And I get a report back, and it seems to --

SENATOR AYALA: Are a lot of these complaints legitimate? I mean, I get a lot of letters. I'm sure Senator Petris gets them as well; he's close to the facility there. There's so many complaints about the veterans themselves complaining about the operation. And I just wonder how many of those are really legitimate.

MR. BURKE: I think it's a well-operated home, Senator, sir.

SENATOR AYALA: Sorry?

MR. BURKE: I think it's a well-operated home, and I think these are probably isolated cases.

Everytime that a resident contacts me or any other member of the Board, we certainly deal with it immediately, and the Department is very cooperative in running everything down.

SENATOR AYALA: I want to channel some of these letters to you.

MR. BURKE: Would you please, sir.

SENATOR AYALA: Thank you.

CHAIRMAN ROBERTI: Yes, Senator Craven.

SENATOR CRAVEN: I just wanted to ask, perhaps, the gentleman to your left, why did they locate that home in

Barstow? Because of the political impact of Senator Ayala?

[Laughter.]

MR. MERONEY: No, sir.

The commission on which Mr. Burke serves reviewed 29 proposed sites, various cities in the seven-county area. And they considered such things as cost, demographics, geography, access to Veterans Administration Hospitals, and so forth. It was a subject that was debated very extensively by the commission, and they chose Barstow for a number of reasons, one of which, Barstow expressed -- the City of Barstow expressed a very high level of interest in having us come there.

SENATOR CRAVEN: Oh, I'm sure.

MR. MERONEY: To the extent that the Barstow Community College District actually donated 22 acres free for our site.

SENATOR CRAVEN: Well, it was just a matter of inquiry.

I've been to Barstow.

[Laughter.]

SENATOR CRAVEN: I thought maybe you had a thought that you wanted to get it as far away from everything else as you could, and if that be the case, you hit it right on the head.

MR. MERONEY: Thank you, sir.

SENATOR CRAVEN: I'm a San Diegan, and we have a lot of military -- well, not as many as we have had, I might add, by virtue of recent decisions -- but I know the people there always thought that it would be a very delightful place, which I think

you would agree. But, you know, the land costs and availability probably negated that to a great degree if not totally.

MR. MERONEY: Yes.

SENATOR CRAVEN: But I was somewhat facetious in what I asked, but I did really want to know how we got it in Barstow.

MR. BURKE: Mr. Chairman, may I?

CHAIRMAN ROBERTI: Yes, please.

MR. BURKE: Senator, sir, San Diego County is being seriously considered for one of the remaining three sites.

SENATOR CRAVEN: Oh, for a --

MR. BURKE: Veterans home.

SENATOR CRAVEN: -- veterans home.

MR. BURKE: Orange County is another one. So there are four cities that's under consideration subject to the help of you elected officials.

SENATOR CRAVEN: That sounds very good.

SENATOR BEVERLY: They'll reserve a spot for you.

[Laughter.]

SENATOR CRAVEN: Fine. I'm about ready now, I think.

I want you to know, ladies and gentlemen, that I am the average age of a World War II veteran: 72 years old.

SENATOR AYALA: I'd like to ask Senator Craven, you've been to Barstow, but have you been to Cucamonga?

SENATOR CRAVEN: Cucamonga? Oh, I've been to Cucamonga. That's one of the more forgettable places I've ever been.

[Laughter.]

CHAIRMAN ROBERTI: I take it, Senator Craven, you're

not running statewide?

[Laughter.]

SENATOR CRAVEN: Cucamonga's a very delightful place.

[Laughter.]

SENATOR CRAVEN: I'm serious now. I remember first back in the mid-'50s, when I was in the Junior Chamber of Commerce. And I went there because it was in my area. As a matter of fact, when I became an Assemblyman, so much of the area I had, I represented in the Junior Chamber.

But I went there, and the thing I remember about it, Ruben, were the grapes and the very high curbs. Does that mean anything to you? Water would run down off the foothills there, you know, wash them out without those, sir. I remember it. A very, very nice place; a little warm but nice.

[Laughter.]

SENATOR PETRIS: May I resume?

CHAIRMAN ROBERTI: Senator Petris.

SENATOR PETRIS: Last month there was an article in the Sacramento Union about complaints from the California Hispanic Coalition that had been filed formally and officially with the State Personnel Board, charging discrimination in hiring and promotional practices in the Department.

Are you familiar with that complaint? Has it come to your attention yet, officially or otherwise?

MR. BURKE: No, sir, it hasn't. I'm not familiar with the article, sir.

I think the Director alluded to a letter was received, and that they were handling it there, but to the best

of my knowledge, there's no discrimination in the Department. I don't think we would put up with this.

Maybe you could add to that.

MR. MERONEY: If I might?

SENATOR PETRIS: Yes.

MR. MERONEY: We did have a complaint alleging discrimination that we received sometime ago. We arranged for an independent investigator outside the Department of Veterans Affairs to come in and review the charges, interview witnesses. We gave him full rein authority, autonomy, to talk to whoever he wanted. He has subsequently issued a report finding that those allegations are without foundation.

But we have taken the further step, at the State Personnel Board's suggestion, of arranging a mediation process with a professional mediator, the Department's management including the new Director, Colonel J. Vargas, along with representatives of the Hispanic Coalition. That meeting is scheduled for next week, and we're very hopeful that that will provide a forum for us to understand what exactly the allegations were and how we can best address them.

We don't believe that there's been any type of discrimination in the Department of Veterans Affairs against Hispanics or any ethnic group, but we want to do everything we can to ensure that we have the process in place.

SENATOR PETRIS: What is your role in the Department?

MR. MERONEY: I am the Chief Deputy Director, which essentially means the number two person.

SENATOR PETRIS: I'm wondering why Mr. Burke hasn't

1 been advised of all this. His reaction was, "I don't know."
2 It seems to me that, as former Chairman and as a
3 member of the Board, he should have been advised immediately,
4 and as a member of the Legislative Committee.
5 Are you still a member of the Legislative Committee?
6 MR. BURKE: Yes, sir.
7 SENATOR PETRIS: This kind of an article is bound to
8 attract interest among Members of the Legislature, and it seems
9 to me there's a gap there. I don't know whose fault it is. I
10 don't know whether Mr. Burke isn't interested and would rather
11 concentrate on other kinds of issues, or whether the staff
12 hasn't informed him, but it seems to me you've outlined a very
13 important series of steps here to meet that problem.
14 The allegations that were reported in the complaint
15 have to do with high level firing; Hispanics constantly being
16 passed up and demoted. Maybe that's why Mr. Vargas was
17 appointed director. Maybe that'll change now.
18 MR. MERONEY: That's certainly possible.
19 It is not Mr. Burke's fault that he was not fully
20 aware of these series of articles. It's the staff's fault.
21 SENATOR PETRIS: No, I'm not referring to the
22 newspaper articles. I'm referring to the actual complaint filed
23 with the Personnel Board relating to the policies of the CAL-VET
24 Board.
25 MR. MERONEY: We have -- we have not taken that to
26 the Board yet on the basis that that's an internal, kind of a
27 day-to-day operational situation, as opposed to a policy -- as
28 opposed to an issue that would come before the Board as part of

1 their policy setting function.

2 SENATOR PETRIS: I would assume their policy would be

3 to oppose discrimination --

4 MR. MERONEY: Very much so, sir.

5 SENATOR PETRIS: -- based upon ethnicity or race.

6 Isn't that right, Mr. Burke. What is your policy?

7 MR. BURKE: Yes, sir, absolutely. And I want to

8 assure you, Senator, had I been aware of this or the article, I

9 certainly would have went in and got the answers on it.

10 SENATOR PETRIS: Well, I would suggest that you do

11 something to see to it that you're informed. Now, I don't

12 expect you to be reading all the newspapers.

13 Where do you live? Do you live here in town?

14 MR. BURKE: I live in Stockton. I don't know how

15 recent the article is. I've been in Palm Springs for a week and

16 on a vacation for --

17 SENATOR PETRIS: Well, good for you. This is dated

18 June 1, and we're now in July.

19 I'm not concerned so much about your lack of

20 knowledge of the newspaper account, although I assume you like

21 to keep up with things as they're reported in the press, but the

22 fact that the complaint is on file officially and should have

23 been brought to your attention right away because it affects not

24 only you but all the Board members. It affects that Board and

25 reflects on the policy.

26 MR. BURKE: Yes, sir.

27 SENATOR PETRIS: I think if somebody's come to you --

28 not filed an official complaint -- and said, "Here's a list of

1 cases of people who are well qualified and in line for
2 promotion, and most of them were passed up. It's too much of a
3 coincidence. There's too much repetition for it to just be a
4 coincidence. I think it's unfair and a violation of state law."
5 My guess is you would have jumped on that.
6 MR. BURKE: Yes, sir.
7 SENATOR PETRIS: You would try to find out what's
8 going on.
9 Would you consider that a violation of State Board
10 policy if it were true?
11 MR. BURKE: If it was true, yes.
12 I don't think that this action happened. I'll assure
13 you, if I was aware, I would jump on it immediately; meet with
14 the Director and Deputy Director. I'm sure the Board's Chair
15 would back me. There is no room in this society for any sort of
16 discrimination of minorities or ethnic citizens.
17 SENATOR PETRIS: Oddly enough, some of the persons
18 named as responsible for the discrimination are Hispanic
19 themselves. That's happened before in other agencies.
20 Sometimes you appoint somebody of that particular community
21 thinking they're going to be okay, they know the community, and
22 they turn out to be not so sensitive, not as good as others who
23 come from another community.
24 Let me ask you about what is your impression of the
25 policy making role of the Board? I ask you that because you've
26 been quoted as saying in a committee a couple of years ago,
27 three years ago, that the Board doesn't have any policy making
28 role or function. Do you remember that?

1 MR. BURKE: No, sir. I might have been quoted out of
2 context or something, but I am not aware of ever making a
3 statement like that, sir. Because this is --
4 SENATOR PETRIS: The direct quote, let me see if I
5 can refresh your recollection, because it's important on this
6 policy making issue. Is the Board going to make policy or not?
7 October 24, 1989, Senate Committee on Veterans
8 Affairs, quote:
9 "There has been no history of the
10 Board serving in a policy making role,
11 which has been an ongoing source of
12 controversy that has not been completely
13 resolved."
14 Close quote.
15 Now, do you remember that?
16 MR. BURKE: No, sir, I don't.
17 SENATOR PETRIS: Whether it's your quote or not, is
18 that a true statement, that the role of the Board has not been
19 policy making?
20 MR. BURKE: Absolutely not. That's one of the main
21 responsibilities of the Board is policy making for the
22 Department.
23 SENATOR PETRIS: And how does that come about? Do
24 you send memos to the Department --
25 MR. BURKE: Yes, yes.
26 SENATOR PETRIS: -- recommending certain policies,
27 ordering policies?
28 MR. BURKE: Yes. I think the Board has the final --

final say on policies.

SENATOR PETRIS: Can you walk me through that procedure?

Let me shorten it. If an issue comes up that has a policy importance, and you don't find any expressed written policy relating to that issue, how do you make it a policy? Do you pass a resolution or a motion? Do you direct the secretary to send a letter --

MR. BURKE: Yes, sir.

SENATOR PETRIS: -- to the Department or a particular part of it? How do you go about making this policy?

MR. BURKE: We would sit down and study the issue, get legal advice on it, write it up, discuss it with the Department. And then, of course, then would implement it by action of the Board that the policy would go in our policy book where we have about 48 policies now, Senator.

SENATOR PETRIS: That's a formal action that you take and it goes on the record.

MR. BURKE: Yes, sir.

SENATOR PETRIS: Can you give me an example of some recent policy that might be in the book that was made by the Board, something that comes to mind?

MR. BURKE: Well, one we have, we have a geriatrics research policy in the mill now for Yountville. The last policy revision we had in our book was 1988, sir, and we're in the process now of going through housekeeping, and of course, we can't touch the policies that are law unless we present them back to your official body. But '88 is the last time, sir.

SENATOR PETRIS: What was that? Is that a new wrinkle in the geriatric program?

MR. BURKE: Yes, sir. We're getting the doctors involved, the physicians involved in it and so forth, methology [sic] and so forth, sir.

SENATOR PETRIS: That's now official policy?

MR. BURKE: No, no. It's being -- it's in the mill now.

SENATOR PETRIS: How long does that normally take?

MR. BURKE: I would say probably talking about usually two Board meetings, a couple months. It would be announced at one Board meeting, then become official at the following Board meeting.

SENATOR PETRIS: The Board is required to meet or does meet once a month?

MR. BURKE: Yes, sir.

SENATOR PETRIS: Do you always have a quorum?

MR. BURKE: Yes, sir, we have had as of a recent date.

SENATOR PETRIS: It makes you better than some of our committees. We have a tough time getting a quorum once in a while.

You mentioned you referred to the attorney; you have to check with the attorney. And the attorney officially advises you on, I suppose, legal questions relating to the policy.

MR. BURKE: Yes, sir, only on legal questions.

SENATOR PETRIS: Do you always follow the attorney's advice?

MR. BURKE: No, sir.

SENATOR PETRIS: How often?

MR. BURKE: Well, that's --

SENATOR PETRIS: Most of the time, I suppose, you do.

MR. BURKE: Yes, that would be a correct statement.

SENATOR PETRIS: What percentage would you say?

MR. BURKE: You mean for policies or --

SENATOR PETRIS: Any legal advice you ask of the attorney.

MR. BURKE: Well --

SENATOR PETRIS: He says, "This is the way you have to go under the law." Do you always go that way?

MR. BURKE: No, sir.

SENATOR PETRIS: Sometimes you have reservations?

MR. BURKE: Definitely, and a lot of times I check it out with private counsel, sir.

SENATOR PETRIS: The Board hires private counsel as a second opinion?

MR. BURKE: No, sir. I go to friends in the veterans community.

SENATOR PETRIS: Pro bono?

MR. BURKE: Yes, sir.

SENATOR PETRIS: What percentage of the time do you have to do that? Is it 5%, 10%, half the time?

MR. BURKE: Again, Senator, sir, I act as one Board member, and I would probably do it 5% of the time, yes.

SENATOR PETRIS: Do the other Board members do it about the same percentage?

1 MR. BURKE: I know they've done it, sir, but I
2 wouldn't dare venture to say how often. I know they have. It's
3 a matter of record.
4 SENATOR PETRIS: I was interested not only in your
5 individual policy but the Board as a whole. Would you say the
6 Board policy generally runs about the same as yours?
7 MR. BURKE: Yes.
8 SENATOR PETRIS: Five percent of the time you've got
9 to do something else, or check with somebody else?
10 MR. BURKE: Yes, sir. In my opinion, sir.
11 SENATOR PETRIS: Yes.
12 MR. BURKE: I wasn't satisfied, and I wanted to make
13 sure that -- it's very hard, sir, to take a position against a
14 veteran and their families.
15 SENATOR PETRIS: Well, it's been done. I don't know
16 how difficult it is, but that brings me to the next subject.
17 I happen to live in the Oakland area. I had big
18 problems with the Board -- with the Department, I should say,
19 not the Board -- on the way the veterans were treated in that
20 fire. I had a lot of meetings with Admiral Hacker. Frankly, I
21 think it was disgraceful.
22 I think that Board and the staff is supposed to
23 follow the law, which is, the main mission of the Department is
24 to help the veteran. Now, there's several aspects to this. I
25 don't want to take up too much time, but it's important. I've
26 worked on this a long time, and I've been very disappointed, to
27 the point where I had to put in a couple of bills to see that
28 the proper policy was carried out.

One of the bills is opposed, is still being opposed, by you and the other members of the Board. I'm curious as to why. I'd like to get that cleared up.

But let me go back. First of all, let me look at the procedure. Now, according to what the veterans have said to us in committee, not just to me, back in Oakland, and in my office, and up here, when they filed a claim to be reimbursed for the losses in the fire, they were told that they didn't have enough insurance, and they weren't going to get the amount necessary to rebuild their homes.

Now, the person who told them that was the attorney for the Board, the attorney for the Department. I don't know if he's here today. Is the attorney here? What's his name, Jackson?

MR. MERONEY: Mr. Jackson.

SENATOR PETRIS: He's not here. I probably should have asked that he be here today.

That's why I also asked you questions about how often you followed the advice of the attorney.

So now the veterans -- a little background there -- the veterans testified that several times after a couple of other fires, they had called the Department and said, "We want to upgrade our insurance." They said, "You don't have to. It's automatically taken care of. So that at the time you have a fire in the future and it costs more to rebuild the house, that's automatically covered." And they were discouraged from going any further.

When the claim was rejected, they fell back on a

1 regulation that says it's up to the veteran to do it, which
2 contradicts the statute which says it's the duty of the
3 Department to do it.
4 All right. So now here they are, looking at the
5 agency designed to help them. They've got insurance with the
6 agency, and their representative, the attorney, says, "No." So
7 they appeal it. They ask for a hearing. The hearing is
8 conducted by a hearing officer.
9 Your agency, your shop, is the only one that I know
10 of, the only one any other Legislators know of that I've talked
11 to, that has that same attorney act as the hearing officer.
12 That seems very, very strange to me. That's why I put in the
13 bill.
14 I would like the Committee Members to take note of
15 that.
16 The attorney turns them down. They go to a hearing.
17 That attorney is now the hearing officer. He turns them down
18 again.
19 Their last resort is to appeal to the Board. And
20 guess who's sitting there with the Board, arguing against their
21 claim but that same attorney/judge/prosecutor/jury, who says no
22 again. So, the Board turns them down, including you, Mr. Burke.
23 You voted no on that issue.
24 MR. BURKE: Yes, sir.
25 SENATOR PETRIS: I'm shocked and surprised. I mean,
26 these people are veterans, and they don't ask for much. They're
27 veterans of World War II, and the Korean War, all three of the
28 wars we've had, you know, since I was in the Army in the Civil

War. Sometimes it seems that way.

And I don't understand a system that has the same person serve as counsel, and then judge, and then counsel to the appellate court. That's what it amounts to. I don't know of any other agency that does that.

And one of the bills that I have says, "You're not going to do that any more." When the Department attorney turns you down, you have a right to an independent judge, like we do in all other agencies, an administrative law judge, or whatever the designation is.

And yet, when they went to the Board to appeal this, the Board turned them down. I don't understand that.

Can you tell us why you voted against the veterans in that situation, to deny the amount of money that they were seeking, just enough to rebuild a house, no more than that?

MR. BURKE: Well, sir, I've been through earthquakes, and floods, and this catastrophic event of the Oakland Fire was awesome, sir. I understand it melted the foundations, and so forth.

We listened to the -- our counsel. We listened to the veterans' counsel. I went out and got independent decisions to see if there was some loophole there, sir, to be able to change my vote.

But why we turned it out, sir, it ended up as a matter of law, in my judgment. I'd liked to have changed that.

SENATOR PETRIS: Now, if you have a couple of laws that are in conflict with each other, and one of them says, "Do it; you may do it," and the other one says, "You don't have to,"

which one would you choose in an effort to help the veterans?

MR. BURKE: Well, I'd do my best, sir, to come down on the side of the veteran.

SENATOR PETRIS: All right. Here's California Code Regulations, Title 12, Section 360, Fire and Hazard Insurance:

> "All properties purchased by the Department must be insured against fire and other hazards for the full replacement cost ..."

Let me repeat that:

> "... for the full replacement cost of the improvements or structures thereon."

Now, "purchased", of course, most people don't know this; I have to explain it. When a CAL-VET gets a loan, the property is owned by the Department. It's not owned by the veteran, unlike regular insurance. You know, I insure my house. I don't turn it over to the insurance company, but the veteran does. So, he's really at the mercy of the Department.

> "The insurance must be in such minimum amount and placed with such company or companies as the Department may determine from time to time except that condominium units may be insured under a master policy ..."

and so forth.

Now that regulation, to me, is very clear. I'd like to know what statute you relied on to say, "No, that doesn't cover it. Some other regulation or statute covers it."

I don't know what could be more clear than this. Yet, they were turned down on the basis that they're not entitled to full replacement cost because the level of insurance at a given time wasn't enough to cover the present-day costs of the fire.

MR. BURKE: Sir, in my judgment, I'm not an attorney and I can't answer that, but the facts that I had before me --

SENATOR PETRIS: Well, did your counsel advise you -- in light of this, your counsel said, "Don't pay"?

MR. BURKE: Yes, sir, in essence, yes.

SENATOR PETRIS: Did you go to other counsel to get some additional help, if that raised questions in your mind?

MR. BURKE: Yes, I did.

SENATOR PETRIS: And what was the answer there?

MR. BURKE: I got an answer, Senator, sir, on the overall --

SENATOR PETRIS: Not on that specific --

MR. BURKE: -- not on that specific question.

SENATOR PETRIS: All right. Now, if you say no to the counsel 5% of the time, don't you think this case would qualify for part of that 5%, in view of the fact there're only seven veterans involved in the whole thing? There were over 3,000 homes destroyed in that fire; only seven were veterans. And they were told, "No."

Didn't that bother you?

MR. BURKE: Certainly, sir, it bothered me. I think, though, you have to treat everyone alike, every veteran that takes a CAL-VET loan.

SENATOR PETRIS: Were there others in the same boat?

MR. BURKE: No, sir, not to my knowledge.

SENATOR PETRIS: So who is it you're treating alike? Who are you comparing it to?

MR. BURKE: Well, again, when you make rules and regulations -- I would hope, sir, that an instant like this would never happen again, sir. And I think we can build policies that allow this, and of course, you're carrying bills that's attractive.

SENATOR PETRIS: But it's opposed by you and the Department -- and the Board, I mean.

MR. BURKE: I don't know that I -- in its present form? You've got amendments on it, sir?

SENATOR PETRIS: Well, I don't know about the latest amendments. You're still opposed, I'm informed.

Would you review that policy?

MR. BURKE: Well, sir, it was amended while I was away, and I haven't recently seen it since the June amendment on it, but I certainly intend to do it, and certainly take it to committee.

SENATOR PETRIS: I would ask you do that.

MR. BURKE: Yes, sir.

SENATOR PETRIS: Here's a Code section, not a regulation, 987.76:

> "The Department shall be the sole judge of the amount of insurance to be placed upon the buildings, fences, other permanent improvements, and crops in the

amount necessary to be paid for the premiums of such insurance."

Now, that could have been used in answer to your attorney, who says, "Hey, it's up to him. If he didn't write out something, he didn't do this and that, he can't get full replacement."

This says the Department is responsible.

Now, another complaint I had was that the Department really doesn't have insurance people. It doesn't consider itself to be in the insurance business. So, when a veteran calls for help, some clerk is answering the phone who knows nothing about insurance and is giving out misleading information. Not for the purpose of being personally misrepresenting, but that they just don't know any better. And when they say to the veteran, "Don't worry about it. Your coverage automatically increases over a period of years and you don't have to do anything," they rely on that.

It turns out that that's false because that's not in compliance with the policy as expressed by you and the Board later, when you said, "No, you don't have enough insurance to get full replacement. You've got to go find the money somewhere else."

MR. BURKE: Senator, on the positive side, C.D.V.A. contracted for a study of insurance programs by an independent consulting firm of Warren, MacVay and Griffin to study and make recommendations to be submitted in July, 1993.

SENATOR PETRIS: To do what?

MR. BURKE: On insurance, sir. Just to -- insurance

1 people are going to do this. I realize it's after the fact.
2 SENATOR PETRIS: Well, it's good to have a policy
3 improve. That doesn't help the present veterans.
4 MR. BURKE: No, sir; no, sir.
5 SENATOR PETRIS: Now, after I had some meetings with
6 Admiral Hacker, before I even put the bill in, he issued an
7 administrative order ordering a change in the policy. There's
8 only one policy. The veteran doesn't get an individual,
9 separate one. It's one policy that covers all the veterans.
10 So, that's easy to change, requiring full replacement value for
11 everybody in the future.
12 That still didn't help those veterans. They had to
13 file a lawsuit, and they finally got a settlement, and it cost
14 them a lot of money, and anguish, and grief.
15 I don't understand why a veteran should be compelled
16 to sue the Department that's supposed to be providing them
17 with insurance and with help generally.
18 I don't understand why the Department opposes a bill
19 that tries to correct that policy. You're right, it was a June
20 amendment, but you're not familiar with it yet?
21 MR. BURKE: No, sir, I was away.
22 SENATOR PETRIS: Well, I would urge you to take a
23 look.
24 MR. BURKE: I can assure you, Senator --
25 SENATOR PETRIS: And I'd like to talk to about it
26 further later on.
27 MR. BURKE: I would be my pleasure, Senator.
28 SENATOR PETRIS: I think you can understand the

concern I have as a veteran myself, who spent a lot of time with these veterans who came up to Sacramento to testify and explained the problem to the members of the committee in both Houses.

MR. BURKE: And we thank you, sir, for your help in settling the claims, because I understand that they're settled at this point?

SENATOR PETRIS: Pardon me?

MR. BURKE: I believe the claims are settled at this point, thanks to your efforts.

SENATOR PETRIS: Well, I'm happy to confirm that. It was settled. Sandra Smoley had a lot to do with that, out of the Consumer Affairs Department.

MR. BURKE: Yes, sir.

SENATOR PETRIS: She jumped all over a couple of people in the Department who kept saying no.

I just find it very, very hard -- you can see I'm frustrated right now -- I find it very hard to understand why that kind of a policy should be carried out, and why the Board would not only permit it, but support it, and ratify it, and vote for it. I mean, I wish you could have some way to clean that record and just say, "Wipe out the minutes for that meeting, and let's vote all over again, and now that we know more about it, let's take another look at it." Just for the record.

They've been taken care of finally, but they had to pay the attorney a lot of money. There are no attorney fees coming out of the Department for that, so they're not whole.

They get money to rebuild the house, but out of that money they had to pay a lot of expenses.

Now, would you also review the policy of having the attorney act in all three capacities? To me, it seems like it's downright un-American. It violates due process and kinds of other things, I think. I'd like to have you review that and ask yourself whether that's justified. It doesn't happen in any other agency in the state, where a business licensee comes before them, or a complainant, or whatever.

I just have a couple more questions. You mentioned that you think the Board plays a good role as a check and balance. Can you elaborate on that for me?

MR. BURKE: Well, sir, we --

SENATOR PETRIS: Who are you checking and how are you balancing?

MR. BURKE: Well, sir, we have approximately 47 policies. We make visitations in the Department, and any -- if there's a complaint of any kind and so forth, we'll see if the policies are working, sir.

SENATOR PETRIS: You used to do that as a Commander of the American Legion, didn't you?

MR. BURKE: Yes, sir.

SENATOR PETRIS: Kept prodding the Department to make sure they took care of the boys.

MR. BURKE: Yes, sir.

SENATOR PETRIS: I got some rave reports on you as a Commander of the American Legion. A couple of the persons who told me that are out here in the audience now.

But I'm surprised that same policy you haven't carried over into the Board. I don't want to dwell on it. The most dramatic example, of course, is the fire.

Well, I would urge you to apply the same prod and spirit that you used as Commander of the Legion in your capacity as a Board member.

MR. BURKE: Yes, sir.

SENATOR PETRIS: I would also ask that you sharpen the awareness and alertness of whatever staff you rely on to keep you abreast of things like we discussed before, filing of a complaint. You may not be able to act on that complaint because it goes through a certain formality, and you can't interfere with that. I understand that. But you can certainly find out who's doing what, and how deep this is, and how extensive, if it's true at all.

I would also ask you to ask them to be more alert and sensitive to keep you apprised of what's going on in the Legislature, and give more serious thought to what role you, as an individual Board member, or the Board as a whole, may play. You could be of great help to us in the Legislature from time to time on responding to the needs of the veterans, to the extent that they require legislation from time to time.

MR. BURKE: Yes, sir.

SENATOR PETRIS: Thank you, Mr. Chairman.

CHAIRMAN ROBERTI: Thank you, Senator.

Any other questions?

Anyone else in the audience wishing to testify, please come forward. I guess no one.

SENATOR BEVERLY: Move we recommend confirmation.

CHAIRMAN ROBERTI: We have a motion by Senator Beverly to recommend confirmation.

The Secretary will call the roll.

SECRETARY WEBB: Senator Ayala.

SENATOR AYALA: Aye.

SECRETARY WEBB: Ayala Aye. Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Beverly Aye. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Petris Aye. Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Craven Aye. Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is five to zero; confirmation is recommended to the Floor.

Congratulations.

MR. BURKE: Thank you, sir.

[Thereupon legislative agenda items were acted upon by the Committee.]

CHAIRMAN ROBERTI: The next is the appointment of P. Gregory Conlon, Member of the Public Utilities Commission.

Senator Morgan is here to introduce Mr. Conlon.

SENATOR MORGAN: Thank you.

Mr. Chairman and Members, it is my pleasure to introduce a constituent from the 11th District to you this afternoon.

Mr. Conlon, as I'm sure your resume tells you, was a

30-year employee of Arthur Anderson. I think these analytical skills that were developed in that period of time will be very useful on the PUC.

I'm also very impressed by the fact that he has committed so much of his life to education and to community service, and most recently with Total Quality Management principles that he has been employing in his volunteer work. I think that also will be of benefit to the PUC.

Whether it's Schools of the Future Initiative in Alameda Unified School District in Senator Petris's District, or the Industry Education Council of California, which has been near and dear to my interests, or his Self-Help for the Elderly in San Francisco, I think you have before you a man who has contributed in the past and will be a major contributor on the PUC and will serve this body and this state with exemplary performance.

CHAIRMAN ROBERTI: Thank you, Senator Morgan.

Mr. Conlon, we'll ask you what we ask all the appointees, and that's why you feel you're qualified to assume this position?

MR. CONLON: Yes.

Before I do that, I want to thank Senator Morgan for her kind comments and her introduction to the Committee for me. Thank you very much, Senator.

Getting to your question, Senator Roberti, I just want to re-emphasize some of the points that Senator Morgan made. The two qualifications I believe I have are the professional experience I had with my 30-year career with Arthur

Anderson, where I was primarily responsible for the independent audits of public utility companies, electric, gas, and telecommunication companies. In that process, I was able to develop skills in accounting, finance, income taxes, and rate making. So, I believe that those skills were developed, but I think more important was my understanding of the industry. In order to do a sufficient audit, you need to understand the economics of the industry in order to evaluate the transactions that occurred in a given year. So, I believe my experience has trained me to be a good practitioner as far as the skills are concerned, but more important, to understand the economics of the industry.

I believe that in auditing the financial statements, we need to attest to the fairness of those financial statements, and I believe that that is very similar to reaching a decision on the PUC, that you evaluate the facts, you form a conclusion, and you issue an opinion in the case of the audited financial statements, and you issue an order in the case of the PUC.

I think in both cases, independence and objectivity are key characteristics for both roles. And I have here today a witness that will further mention the requirements of the profession with regard to independence and objectivity of a particular audit client.

In addition to my audit responsibilities, I performed several special projects that -- where independence and objectivity were required, and I testified as an expert witness in a number of jurisdictions, ten different states, and before the National Energy Board in Canada.

I think that in addition to my professional experience, as Senator Morgan mentioned, I've spent a lot of time in the community and in the education process. And I'll just very quickly go through that.

I've worked for ten years with Self-Help for the Elderly. This is a senior citizen agency in Chinatown that serves over 20,000 seniors. I was on that board and an officer, and I was on the board and an officer of Pineview Housing, which is a subagency where we built a public housing project of 70 units on top of the Broadway Tunnel in San Francisco's Chinatown. So, we are very pleased with that project. I think more important, we are providing social services to the Chinese community in Chinatown in San Francisco.

In addition, on a statewide basis, I was board member and officer of the Industry Education Council for the last four years, where we -- our primary initiative has been K-12 education and jobs, from graduation to jobs. Otherwise, the career training, a transition for high school graduates into the workforce. And that Industry Education Council has become very active in the last couple of years and is doing some great things for the state, in which Senator Morgan is supporting them.

Finally, I want to talk about the efforts in Alameda Unified School District. Arthur Anderson, after my retirement in 1991 from Arthur Anderson, they retained me as a consultant to work pro bono with the Alameda Unified School District. And in that exercise, primarily as a change agent or facilitator to bring change to the classrooms and to the schools of Alameda

1 Unified School District. That district is about 10,000 students
2 of 20 different schools, and the majority of the students are
3 minorities. So, I think it's a very diverse school district,
4 and if we can help them create a vision, which is one of our
5 objectives, and implement the graduate profile, which they have
6 developed over the last two years, that if we can do that in
7 Alameda, or if they can do that in Alameda with our support,
8 that that will be a real tribute to the state, and we're hoping
9 that that will happen.
10 Finally, as Senator Morgan mentioned, the Quality
11 Initiatives, in connection with putting quality in schools, I
12 became a student of quality myself because I was concerned about
13 doing something for the schools, and I wasn't convinced myself.
14 So, I became a student of quality as practiced by Dr. Demming,
15 and I've spent almost three weeks through his training programs
16 over the last two years, and I believe that I'm comfortable with
17 the Quality Initiative in the school district. Hopefully, that
18 will help me at the PUC in implementing similar type programs.
19 So, I think those are the two major qualifications:
20 my professional career which allows me not only to be a
21 professional accountant, but to have business perspective to
22 bring to the issues; and my community and charitable work that
23 I've demonstrated over the last ten years.
24 So, I think with that, I have two witnesses, if you
25 want me to go ahead.
26 SENATOR CRAVEN: Fine. Why don't you have them come
27 up one at a time, Mr. Conlon.
28 MR. CONLON: The first is Janice Wilson, who is the

President of the State Board of Accountancy, will deal with the issue of independence.

MS. WILSON: As a little bit of background, the California Board of Accountancy is a 12-member board that regulates the practice of some 60,000 California CPAs and public accountants.

And I'm here today to make this statement before you about Mr. Conlon that, while he was a practicing CPA, and as the audit partner of Arthur Anderson and Company, he was required to maintain his independence from his utility clients, from all of his audit clients, both in appearance and in fact.

Independence is a concept that's fundamental to the accounting profession. It's a cornerstone of its philosophical structure. This difference can best be seen when it's compared with other professions, such as law and medicine. An attorney's duty is to his client; the doctor's duty is to his patient. But when a CPA expresses an opinion on the financial statement, his first duty is to those that rely on that financial statement, which is the public, not the client.

No matter how competent a CPA may be, the CPA's opinion will be of little value to those who rely on it unless the CPA maintains that independence. To further ensure independence, the Securities Exchange Commission requires that all audit partners of SEC clients rotate off an audit assignment at the end of a seven-year period of time. Mr. Conlon has informed me that he did in fact rotate off the in-charge audit responsibility of his most recent SEC utility client in 1987.

The California Accountancy Rule Number 65 explicitly

1 sets out standards of independence for a CPA, and you have it
2 there to read, so I'm not going to read it to you. But the
3 concept is that the independence is determined by assessing the
4 accountant's financial, promotional, managerial, and other
5 relationships with the enterprise to determine whether in the
6 circumstances the auditor's opinion would be considered
7 independent, objective, and unbiased by one who had knowledge of
8 all of the facts.
9 The American Institute of CPAs, AICPA, and the
10 Securities and Exchange Commission have strict interpretations
11 on independence. In fact, the second general standard of
12 generally accepted auditing standards indicates that in all
13 matters relating to an assignment, an independence in mental
14 attitude is to be maintained by the auditor or auditors.
15 The Code of Professional Ethics of the AICPA also
16 states that the public expects a number of character traits in a
17 certified public accountant, but primarily integrity and
18 objectivity, and in the practice of public accountancy,
19 independence. This means that even in a controversial
20 discussion with a client, the CPA must maintain absolute
21 integrity and objectivity, and not allow that objectivity to be
22 impaired.
23 As an independent auditor, the CPA performs this
24 unique service of impartiality and objectivity. Thus, a CPA who
25 audits an enterprise must maintain a strict relationship between
26 the client and the CPA so that his or her independence is not
27 impaired.
28 And I trust that this information helps you as you

consider this decision today.

SENATOR CRAVEN: Fine, thank you very much. We appreciate it.

MR. CONLON: Thank you, Janice.

The other witness is Dennis Chaconas, who is the Superintendent of the Alameda Unified School District.

SENATOR CRAVEN: Very well, here he comes.

MR. CHACONAS: Good afternoon.

A little background. Before assuming the Superintendence of Alameda Unified School District, I was an employee of the Oakland Unified School District for 23 years.

SENATOR PETRIS: Principal.

MR. CHACONAS: Yes, I was Principal of Oakland Technical High School.

But in my last duties, I was the Area Superintendent and was in charge of Prescott Elementary School. We met there, Senator Petris.

As coming in as four weeks ago as the new Superintendent of Alameda Unified School District, I had the pleasure to interview staff members, parents, community members, and students about who was the movers and shakers in the Alameda Unified School District.

I left Oakland for one main reason, and I felt that Alameda was at the cutting edge of educational reform, and that was due to the graduate profile and the new visions for education in Alameda.

In my questions with these individuals about who was the person that was pushing this agenda, that was helping to

refocus education in Alameda, because I wanted to know who I should thank for making me a candidate for the Superintendency. And continuously, Greg Conlon's name came up, and it was unallocated. They just brought up his name.

I'd like to read some of the statements that these individuals made.

> "Greg Conlon has the ability to listen and understand what roadblocks we were facing in the district. He is willing to look at a problem from all perspectives. He is willing to go beyond the normal set patterns of thinking and to take a beyond the dots approach to problem solving."

One of the key documents that is used as a kind of Bible in Alameda is to go beyond the nine dots. And when says that Greg Conlon has that ability, that's a tremendous compliment.

> "He's a friend for all students, staff and parents."

And finally,

> "Greg Conlon [this is from a teacher] gave me a new view of what the business world wants out of public education."

In preparing to testify, I thought of the qualities that you must be looking for, and I think Greg Conlon would be an excellent addition to the PUC. And it is a pleasure and an honor to recommend him for this position.

Thank you.

SENATOR CRAVEN: Thank you very much, sir.

Are there any questions of the Members? Senator Ayala.

SENATOR AYALA: Mr. Conlon, last week the Sacramento Bee ran a story announcing that PERS, the Public Employees Retirement System, decided to invest $250 million in a joint venture with ENRON. Based on this significant investment, does the PUC regulate or have dealings with ENRON?

MR. CONLON: Well, ENRON, I believe, is a party to certain proceedings. I know the most recent one I can think of is the San Diego Gas and Electric. They were a party to the performance incentive rate making. So yes, they are party on occasion.

SENATOR AYALA: So, you do regulate ENRON.

MR. CONLON: Well, in -- they are a party. I'm not sure -- they were an owner of -- or maybe they still an owner of one of the two pipelines, Transwestern. It must be Transwestern.

Let me verify that.

Yes, that's true. They own the Transwestern pipeline which supplies gas to Southern California.

SENATOR AYALA: And so, the PUC does get involved with that company?

MR. CONLON: Well again, we do not regulate Transwestern. They're regulated by the Federal Energy Regulatory Commission.

But I have to believe that ENRON is a party to our

cases on occasion -- on several occasions.

SENATOR AYALA: Are you or any other member of the Commission members of PERS?

MR. CONLON: On the Board, are you saying, or do you mean as a pension --

SENATOR AYALA: Are members of PERS?

MR. CONLON: Yes.

SENATOR AYALA: Yes, you are.

MR. CONLON: I'm a recent member myself.

SENATOR AYALA: Do you see any conflict of interest in making potential decisions that affect PERS and ENRON, since you're a member of PERS and you're dealing with a utility, and you're investing one in the other. Is there a conflict of interest there between the members that belong to both?

MR. CONLON: Senator, I had the same reaction you did: was there a conflict here? And I took this matter to our attorney, who is with us here today, and I asked him to look at this and let me know whether he felt it was a conflict. Because if it is, I think we need to put PERS on notice that in spite of the fact that we don't have any jurisdiction over PERS, that the employees of the Commission, some of which are -- have been employees for many years so they have large investments in their future retirements, so I --

SENATOR AYALA: The attorney said there was no conflict?

MR. CONLON: No. I just asked him to look at it.

SENATOR AYALA: They haven't responded to you yet?

MR. CONLON: No. Peter Arth, I just met with him two

days ago on this point, and he has not had a chance to respond.

SENATOR AYALA: What is your general opinion of this investment by PERS?

MR. CONLON: Well, I think --

SENATOR AYALA: It went outside of the regulatory waves of investment; they thought it would be a better way of doing it, but it's kind of risky when they do that.

MR. CONLON: I don't think that I'm in a position to judge the reasonableness of their investment.

My only concern was that it may be a conflict if our employees are in proceedings where ENRON is a party, and those same employees have large investments in PERS, or a large interest in PERS. So, I did ask the attorney to look at that and give us advice on what to do. So, that is in the mill, and I just met with him two days ago on that point.

SENATOR AYALA: We're told that ENRON gas service is the largest buyer and seller of natural gas in North America, so it's no small company.

Are you telling me some of the members of the PUC are also members of PERS? Did you establish that?

MR. CONLON: I'm only -- and I'm a new state employee, at least temporarily, so I'm not familiar with PERS.

When you say a "member", I assume you mean that people are subject to pensions from the PERS, or are you talking about their board?

SENATOR AYALA: I'm talking about the board members. I'm not so sure that members by themselves could be making all the dealing and wheeling. It would have to be the Board of

PERS.

MR. CONLON: I don't think we have any members that are on the PERS Board. No, we do not.

SENATOR AYALA: So, you see no problem generally with that kind of an investment by PERS into --

MR. CONLON: No, I'm not judging it from a business standpoint.

I'm just saying I'm concerned enough to ask the attorney whether there's a conflict of interest issue that we ought to address, and that's what I've asked.

SENATOR AYALA: Do you think we ought to find out?

MR. CONLON: Yes.

SENATOR AYALA: Would you give us the opinion of the attorney when he gives it --

MR. CONLON: Yes, I'll share that with you.

SENATOR AYALA: You and I discussed at great length the tremendous amount of paperwork required for highway carrier permits. It doesn't make sense to the lay person, but apparently they think that there's a need for all this paperwork of duplicative, unnecessary, in our opinion, statutory, regulatory information.

You tell me in your letter to me that you are looking into that, and you will continue to examine our requirements to determine whether they are unnecessary or duplicative information requests that could be removed to help simplify.

Are on top of that?

MR. CONLON: Well, I met with Bill Schulte, who's here with me today who's in charge of our transportation group,

and he has informed me that in spite of the fact that there is a lot of paperwork -- I'm not denying that -- that the industry has generally been supportive of the changes that were made, and that they do perceive them as being streamlined.

Now, I think that your constituent does not agree with that, but I think as the industry, that's the impression we're getting.

SENATOR AYALA: Well, it's normal for those who are in to make it tough for anybody to get in, you see. They protect themselves that way, and the heck with everybody else.

I don't think it's fair to say the industry supports it. Well, of course they do. They're already in. But if they were starting from scratch, I'm sure they wouldn't be so enthused about a stack this high of information that, in terms of lay people, is not really necessary.

I just wonder if you will continue to look and let us know where we can -- some of it's statutes required by the state. Can't we find out how to streamline that process, and maybe you can give us information on how to do that and we'd delete some of the -- they're duplicating.

MR. CONLON: I will personally look at that and look at the paperwork myself and form my own judgments and get back to you, Senator, with my judgment. Right now, I'm relying on the staff.

SENATOR AYALA: Would you do that, because, you know, before someone can start a little business, he's got to have ten attorneys to find out what the PUC wants.

And again, sure, industry supports it. They're in;

why shouldn't they support it? They don't have to put up with the tremendous amount of paperwork and deleting some of the competition, perhaps, they don't like.

But if you will stay on top of that, and let me know how we can streamline that so we can remove some of this useless information. Really, it doesn't do anything that you should be required. Would you do that for me?

MR. CONLON: I certainly will.

SENATOR AYALA: Thank you.

SENATOR CRAVEN: Senator Petris.

SENATOR PETRIS: Thank you, Mr. Chairman. I'll be brief.

I am interested in the independence question.

MR. CONLON: Yes.

SENATOR PETRIS: One of the witnesses, President of the Association, and we also have a letter.

The clients you had you served in an auditing capacity.

MR. CONLON: Yes.

SENATOR PETRIS: You weren't the bookkeeper who did their daily work.

MR. CONLON: No.

SENATOR PETRIS: You came in and audited them.

MR. CONLON: Right. And we issued the financial statements required by the SEC to the public to issue debt and common stock offerings.

SENATOR PETRIS: Will you continue to do that while on the PUC?

MR. CONLON: No, I retired from Arthur Anderson in '91, and as Ms. Janice Wilson said, I -- my last in-charge SEC client was 1987.

SENATOR PETRIS: I think there's a mistake on your background sheet here. It says you were licensed to become a CPA in '91. Is that correct?

MR. CONLON: I retired in '91. I think that's an error. I retired in '91, and I apologize.

SENATOR PETRIS: It says: State of California Certified Public Accounted, date issued -- this is under "List Professional Licenses and Certificates. Obviously a typo -- it says April 1, 1991. That's probably when this paper was written.

But anyway, that's not correct.

MR. CONLON: That's not correct.

SENATOR PETRIS: Well, it piqued my interest, because I thought if you'd been in accounting all these years and didn't take the exam --

MR. CONLON: No, my exam -- my certificate is on the wall, and I think it's 1972.

SENATOR PETRIS: Because as a lawyer, I'd hate to have taken the Bar exam as late as '91.

[Laughter.]

SENATOR PETRIS: About 50 years after I got out of school.

So, I'm glad that that's a mistake.

I'm interested in the independence thing. I don't see any comments relating to your knowledge of or contact with

consumers and consumers' rights organizations and where they're coming from. You're going to see a lot of that at the PUC; you undoubtedly have.

MR. CONLON: I have.

SENATOR PETRIS: It's interesting that TURN is not here to oppose you. They're not supporting you, but at least they're not in opposition. Sometimes, they come in and oppose nominees for this.

Do you have any contact with them?

MR. CONLON: Yes, I've had quite a bit of contact with them. I was fortunate enough to come on the Commission and go to two seminars for the Legislature, actually, one of them for the CFE, the California Foundation of Energy and what have you. But TURN was there; Mike Folio was there for two days. And then again another one -- the first one was on the electric industry and the second was on the gas industry, and TURN was represented at both of those.

I met with TURN in my office on two different occasions: one on gas and one on telecommunication. So that, I think that I have established a rapport with them, and I hope that they believe that I'm going to be fair and give a balanced approach to my responsibilities. And I hope that their evidence of not being here is indicative of that.

SENATOR PETRIS: I would agree. I think we have to assume that, as a minimum, they would assume that you'd be fair, or they'd be in here telling us you're unfair --

MR. CONLON: Right.

SENATOR PETRIS: -- based on whatever voting record

you have up to now.

You don't feel that your exclusive contact in a professional way with the utility people, as opposed to a consumer group, is going to make you less objective in considering consumer interests in the many decisions the PUC makes regarding rates and so forth?

MR. CONLON: I understand the question.

I think that, you know, as a professional accountant, being independent is part -- for 30 years, that I will be an independent Commissioner for six years and make sure that my approach and my conclusions are unbiased and balanced in their result.

SENATOR PETRIS: I think that's more significant than usual because of a couple of Supreme Court decisions we've had lately. One of them takes your folks off the hook when they're rendering an opinion relating to an analysis of a company and the stock. For example, they used to be accountable to a third party, like me, a buyer. I'm not a client, but I look over reports on stocks that the CPAs do, reports on companies, and I find one that's affirmative and positive, and I buy the stock, and it turns out there's a big, bad error in that, I used to be able to sue the accountant directly because I did rely on their report.

The Supreme Court of California has now removed that and said, unless you have privity -- meaning being a client, I suppose, or a customer of some kind -- you're not eligible any more.

That disturbs me, because it removes another step of

accountability from the profession. They're less accountable.

Now comes the same Supreme Court and says, "We're not going to hear appeals from rulings of the PUC any more."

Now, a lot of those rulings, if they're on rate making, rely heavily on the analysis of accountants, both in-house and out. Consumer groups have their accountants, you know; the utility has its accountants. So, they've been relieved of liability in one kind of situation, and now it's being compounded by the fact that if the consumer doesn't make it at the PUC level, that's the end of the trail. Whereas in the past, they could go to the Supreme Court. This Court, for some reason, has just said "No, we're not going to." Maybe they're overworked, or something. They're not taking any more appeals from the PUC.

That increases the burden on you as a member to make sure that the consumers' interest, as well as everybody else's, is carefully guarded because it's the end of the road.

Do you want to comment on that?

MR. CONLON: Well, I think that I understand the responsibility, that we do have very important decisions to make in each case, and that we can't exercise a bias one way or the other.

And I assure you that, based on my limited record and my track record as an independent accountant, that I'll call them as I see them, and I will be unbiased. And I understand the interest of the consumer and the rate payer as being very important, and I will respect that and consider it.

SENATOR PETRIS: Do you happen to know -- I didn't

read the decision. I don't know if it was actually a decision; it's just a policy of the Court that's rejecting all appeals. Do you happen --

MR. CONLON: I'm not familiar with that.

SENATOR PETRIS: Have there been discussions of that at all in the PUC meetings?

MR. CONLON: Not in the time that I've been there.

SENATOR PETRIS: Can anybody else help me on that?

MR. CONLON: Peter; he's our General Counsel, Peter Arth.

SENATOR PETRIS: Do you reject his advice 5% of the time?

[Laughter.]

MR. ARTH: I very much enjoyed that line of questioning, Senator. I hope Greg listened closely.

That's news to us. I mean, you can look at the rate of the California Supreme Court taking discretionary appeals -- they haven't taken one recently -- and perhaps reach that conclusion, but there's nothing they've announced. And we obviously consider them as still looking closely over our shoulder in terms of Writs of Review for Commission decisions.

SENATOR PETRIS: I have a staff note here that says under the law, the Supreme Court is the only one with the jurisdiction to take --

MR. ARTH: And that's correct.

SENATOR PETRIS: -- take appeals. But then it says that there've been complaints that the Supreme Court has failed to give enough attention to reviewing significant issues that

1 should have been reviewed that came out of a PUC ruling, which
2 were appealed but were rejected by the Court. And as a result,
3 Senator Roberti, our Chairman, carried a bill to enlarge that
4 and have the Appellate, the next tier, get jurisdiction. The
5 Governor vetoed it.
6 So, it looks to me like we're being hammered here by
7 the Court in different areas to the detriment of the consumer.
8 It's the way I read it in all three either decisions or policy
9 making.
10 MR. ARTH: I think one positive aspect of that
11 legislative effort, and this was a topic when now-President
12 Fessler was here for confirmation, is that there is an
13 intermediate step. It's an internal appellate process where a
14 party files a petition for rehearing with the Commission.
15 It used to be that the decisions the Commission
16 issued were in the vein of a one-liner: "We've looked at
17 everything; we herein deny."
18 A reform that Commissioner Fessler asked us to invest
19 in, and we have, is to make the decision on rehearing look like
20 an appellate decision. I think that's been helpful to the
21 California Supreme Court. The parties have universally said,
22 "We now appreciate getting your thinking."
23 SENATOR PETRIS: Would that be why they're not taking
24 as many appeals?
25 MR. ARTH: It might be. The historic volume has been
26 about the same, but I think our decisions on rehearing are far
27 better now, and we've actually had parties who supported Senator
28 Roberti's bill saying, "We're now satisfied."

SENATOR PETRIS: On the major issues, major decisions, that the Court has been rendering in the past five years or so, have they all been published, or are there de-publication orders on some of the significant ones?

MR. ARTH: For the PUC, because we only get them from the California Supreme Court, we have one published decision, I think, in that last three years on attorney-client privilege.

SENATOR PETRIS: That's all? One published or de-certified?

MR. ARTH: No, one decision, period, and it was published.

SENATOR PETRIS: You've only had one in three years.

MR. ARTH: Yes.

SENATOR PETRIS: Thank you.

SENATOR CRAVEN: If there be no objection, I'd like to call a ten-minute recess.

[Thereupon a brief recess was taken.]

CHAIRMAN ROBERTI: The Committee will reconvene.

Senator Rosenthal has joined us, the Chairman of the Senate Energy and Public Utilities Committee. Senator Rosenthal, you'd like to ask some questions?

SENATOR ROSENTHAL: Thank you very much, gentlemen.

The PUC, of course, deals with a number of issues that are paramount in the Energy and Public Utilities Committee of the Senate, which I Chair, and so let me ask you a couple of questions.

The PUC has held a number of hearings on telecommunications infrastructure issues; three of them, as a

matter of fact, throughout the state, one of which I participated in the other day. And you may not have a final opinion yet on the subject matter, but I'd just get some of your thinking on how best to meet California's needs in this area of telecommunications infrastructure.

MR. CONLON: Yes, Senator.

We've had three hearings: one in Sacramento, and one in Pasadena, and one in San Francisco. I think they've been very enlightening.

I've been very fortunate to come on the Commission right before they've had these hearings, as compared to somebody that comes on, you know, in the next couple of months; it's going to be unfortunate.

But I believe that they've defined the needs fairly well in the second session. I think the session last week up here in Sacramento, there was a lot of consensus felt by the participants, which, you know, I'm not sure that I fully understood the magnitude of that consensus, but I think that there was a consensus that there needed to be some standards of inter-operatability and inter-connectability. And those terms are -- I know they're buzz words in the industry, but so that the systems work between various providers, for the people that are not familiar with the industry. Just -- and the Commission needs to be able to set the standards so that the networks, the various networks -- and I think there was a consensus that there'll probably be more than one network. You've got the cable companies, and the local exchange companies, and the private carriers -- so, there'll be a number of networks. And I

1 think the Commission, everyone was encouraging us to make sure
2 that they all worked; that they could interconnect, and that
3 they could communicate between each other.
4 So, and I think we have a hearing going on the --
5 it's called the ONA, which is kind of a first step in freeing up
6 the local exchange companies to provide other providers to come
7 in and use of their equipment.
8 So, I think it was very encouraging, because I think
9 what we need is some kind of a vision. And one of the parties
10 said, "We'll keep it simple," and so it's something that can be
11 implemented. And I think universal service probably needs to be
12 addressed again as to what that means in this new technology.
13 And I know that your comments regarding the schools
14 was certainly one that I share with my working with schools in
15 the last two years; that somehow, there's a public good
16 responsibility to fund technology for the schools, and the
17 libraries, and the community centers, and the hospitals. So,
18 there wasn't any consensus on how to do that, but I think
19 there's definitely a great need to do it. And I know your bill
20 is in that direction, so I certainly support that effort. But
21 how to fund it is going to be the bottom-line question.
22 So, but I think those are the general comments I
23 have. In the next six weeks, we will go through a process at
24 the Commission that should pull our comments together and get a
25 consensus, and then we'll issue our report, hopefully, in the
26 early fall.
27 SENATOR ROSENTHAL: Very good.
28 The next subject matter is one of the state's

electric services industry. I'd like to kind of get your idea, briefly, of the vision of the future. Do you see a more competitive environment? I have a personal interest in electric vehicles as being the direction that we ought to be moving toward the future.

Comment?

MR. CONLON: Well, again, I've been very fortunate in my timing because there's been three hearings in this regard; open hearings in the electric industry. And the staff has developed this yellow book, which I think is a seminal piece of work on analyzing the industries, what the issues are, and what needs to be addressed. So, these hearings plus this report that the staff issued are going to allow us to try to and create a vision, if you will, for the electric industry.

And competition is really the economic force that's happening. I mean, there's -- you know, we can do so much, but I think in the long run, the economics of free competition in electric generation are going to make things happen. And if they don't, then the federal government's going to step in and probably make it happen.

So, we need to help and figure out a vision that makes sense for California and do it first, before the federal government comes in and does it to us, so to speak. So, that's my thought on that.

SENATOR ROSENTHAL: I have a lot of good feelings about the PUC. However, not all wisdom resides there. In fact, often we in the Legislature propose some new directions for the Commission.

What is your view on the relationship between the PUC and the Legislature, and what do you think can be done to improve that relationship?

MR. CONLON: Well, I think that the issue both in the two that we talked about -- telecommunication and the electric industry -- the changes are going to be so dramatic that the Commission itself cannot do it. I think we're going to have to get legislative support and to get legislative changes, because without those legislative changes, I think the changes that are going to be recommended will not -- I don't think we'll have the ability and the power to do it.

So, I think that we need to work together to create both of these industries and to lead California out of some of the economic problems that we're suffering from right now. And I just think that it's a must that we work together.

As far as the mechanics on how to do it, as the new kid on the block, I'm not sure how to do that. But I'm hoping that just one-on-one discussion with each of the key players at the Legislature will be a first step, and I hope we'll get some legislation that would help it -- help make it happen.

SENATOR ROSENTHAL: And finally, my only comment would be that in the short period of time that you've been on the Commission, it's my feeling that you've done a good job, and that you're thoughtful, and that you look at all sides. And I think that you make a fine Commissioner.

MR. CONLON: Thank you very much, Senator. I appreciate that very much.

SENATOR ROSENTHAL: Thank you, Mr. President.

CHAIRMAN ROBERTI: Thank you, Senator.

Senator Petris.

SENATOR PETRIS: Sorry to go a second round.

I wanted to ask earlier about the Commission's role in helping protect the environment and improve it, and of course, Senator Rosenthal went into that electric. And you may have answered this earlier when I was out.

When the Clean Air people made their very tough announcement that there had to be a certain percentage of automobiles powered by electricity by the end of this century, were their staffs conferring with your staffs on this to see about any problems that might arise, any obstacles, or get the active support of the experts on your staff?

MR. CONLON: I have no personal knowledge. That happened before I came on the Commission, so I just don't have any personal knowledge. There's probably people in the audience here, if you want to try.

SENATOR PETRIS: I guess the question is, is there intercommunication now between your staff and theirs regarding, perhaps, the capacity to do this? If we go all electric, we have to have a lot of charging stations, and so forth. How is that going to affect our capacity to provide the electricity?

Are you going into those problems?

MR. ARTH: Yes, we basically are part of a trilogy with the State Energy Commission and the State Air Resources Board. Our task was to put a dollar value on emissions, and in that way try to help move the state between -- you know, from where they've been with cheap fossil plants to the best

environmentally sound choices. And in helping us set a dollar value on NOX and other emissions, we worked with the State Air Resources Board, the South Coast District, and we did work closely together.

SENATOR PETRIS: The role of government was mentioned in connection with this whole area.

I had bills years ago, in the '60s, several different bills pointing toward electric cars. They didn't pan out. One of them I got out of Popular Mechanics, which showed a picture of electric cars going down the highway being drawn by a magnet embedded in the road, controlled from a central source. The spacing between cars was controlled, the speed, and it was touted not only as good for the environment but an improvement in safety.

We may eventually get to that. I don't know how practical it is now.

I'm wondering if the PUC policy is to have the staff examining various options that we might want to consider as part of the overall view that the Legislature is taking, so we don't just concentrate on, well, let's build a lot of electric cars. There are different kinds of cars and different ways to do it.

I had another bill that drew a circle around every city of 250,000 or more. It wouldn't let any internal combustion engines penetrate that circle, except for police and fire. The rest of us would use a golf cart, a modified golf cart, activated by a credit card. You just get in the golf cart after you've parked your car outside somewhere and go into town, and at the end of the day or end of your shopping, you get

another golf cart. And you're billed each month for the use of it.

I think we ought to dust off some of those ideas and take a good look at them.

MR. ARTH: I think you were ahead of your time. Your views are going to get vindicated in the next few years.

SENATOR PETRIS: I hope I'm still around.

MR. CONLON: I think President Fessler and Senator Rosenthal are very interested -- very much interested in those subjects, so you can rest assured that they will pursue it, I think, and I will support them in that effort.

SENATOR PETRIS: Thank you.

CHAIRMAN ROBERTI: Any further discussion?

Is there anyone here either in support, opposition, or with observations? There aren't any.

SENATOR CRAVEN: Move.

CHAIRMAN ROBERTI: Senator Craven moves the confirmation of Mr. Conlon be recommended to the Floor.

Secretary will call the roll.

SECRETARY WEBB: Senator Ayala.

SENATOR AYALA: Aye.

SECRETARY WEBB: Ayala Aye. Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Beverly Aye. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Petris Aye. Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Craven Aye. Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is five to zero; confirmation's recommended to the Floor.

Congratulations.

MR. CONLON: Thank you very much, gentlemen.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 4:12 P.M.]

--oo0oo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of July, 1993.

Evelyn J. Mizak

EVELYN J. MIZAK
Shorthand Reporter

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HEARING

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, JULY 14, 1993

2:05 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM CRAVEN, Vice Chair

SENATOR RUBEN AYALA

SENATOR ROBERT BEVERLY

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR DAVID ROBERTI, Chair

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

ALFRED R. VILLALOBOS, Member
State Personnel Board

ASSEMBLYMAN RICHARD POLANCO

SAEED M. ALI
Community College Educators of New Californians

LES TREECE-SINCLAIR, Co-Chair
California Coalition of Minorities,
Women and the Disabled

ROBERT SIFUENTES, President
Capitol City's Chapter
Personnel Management Association of Aztlan

FLORENCE SUSAN BOS, Member
State Personnel Board

BUD CARPENTER, President
State Personnel Board

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P-R-O-C-E-E-D-I-N-G-S

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SENATOR CRAVEN: We have one of our colleagues to make the presentation of a person who is going to be considered as a member of the State Personnel Board, Mr. Polanco.

ASSEMBLYMAN POLANCO: Thank you, Mr. Chairman, Members.

On March 18th, Governor Pete Wilson announced the appointment of Alfred Villalobos to the State Personnel Board. Mr. Villalobos has been a friend for several years. We are here today -- Senator Art Torres was going to make the presentation; unfortunately, he is in committee currently. I'm here asking the Committee to support the confirmation and to give the opportunity for this confirmation to go through.

Mr. Villalobos is a gentleman who has broad experience in the banking area. As a former California member of the Board of Banco Popular de Mexico -- excuse, de Puerto Rico, he served and played an integral part in the development of the bank as well as the management of the bank.

He went on and has demonstrated a sensitivity to the issues of the disabled by serving in the capacity in the East Los Angeles Regional Center of the Department of Disabled Disabilities Program. He brings to the State Personnel Board hands-on experience on the issues of employment, those issues that are important to the ever changing population of the state, the issues of diversity, opportunity of upward mobility for qualified candidates. He has demonstrated further his ongoing interest in civic duties as demonstrated and outlined in his

resume.

As you know, this is a very important appointment, not only to the State Board of Personnel, but Mr. Villalobos currently is a member of PERS. As a result of being appointed by the Governor to this post, there is a position that allows for Mr. Villalobos to also sit on PERS. In that capacity, he has brought an understanding of management, of finance, and real estate, and as we begin to diversify the opportunities from the PERS perspective, he is bringing a tremendous amount of hands-on knowledge and leadership.

I'm here, in closing, Members, to ask this Committee to support the confirmation of a person who, in our community, has demonstrated sensitivity, leadership, and a commitment to making public service what it should be.

With that I will close and, if it's appropriate, Mr. Chairman, I'd like to introduce to you the proposed nominee to the State Personnel Board, Mr. Al Villalobos.

SENATOR CRAVEN: Thank you very much, Mr. Polanco. We appreciate the fact that you took the time to introduce this gentleman to us.

He probably doesn't need too much introduction, to use sort of an old cliche, but first of all, the Rules Committee would like to congratulate you upon your recent selection as Deputy Mayor of the City of Los Angeles, which has a great meaning to all of us.

And it seems, perhaps, somewhat extraneous when I then say to you, would you tell us now why you feel you're qualified for this job? But that's what we do regularly, so if

you could give us a few words why, I think it would be appropriate.

MR. VILLALOBOS: I would be happy to, Senators.

For the last 25 years, I've been involved in business and as a volunteer member of several boards and commissions as various stages of government: local, state, and federal. I have served on the Western States Advisory Board for MANPOWER. I have served on numerous industry-wide committees that affect our workforce and the betterment of the workers. I presently serve on a couple of task forces basically involved with the upward mobility of our diversified population.

As you know, in California our state is the most diversified of any state in the country. It is something I am very committed to personally.

I also had the extraordinary experience of being an administrator several years back of a Regional Center for the Developmentally Disabled, and I am much closer to that community than ever before. Since then, myself and my children have been volunteers in various organizations for developmental people, and it's something that I feel is very important, especially with the passing of the ADA Act last year.

If you have any other questions, I'd certainly be happy to answer them.

SENATOR CRAVEN: Fine, thank you very much, sir.

Do any of the Members of the Committee have any questions of Mr. Villalobos? Senator Petris

SENATOR PETRIS: I won't do it, but I'm tempted to ask if you've contributed to Mr. Polanco's campaign in the past.

[Laughter.]

MR. VILLALOBOS: As a matter of fact, I have not.

SENATOR PETRIS: The only other problem is, you're a banker, according to the criticisms we've had.

[Laughter.]

SENATOR PETRIS: I'm concerned about information that we've received regarding a policy of the Personnel Board in the past few years, several years, relating to affirmative action and a fair representation in employment of Hispanic women. Specifically, we've been told that they were underrepresented substantially in a survey made a few years ago. I don't remember the percentages. And then, more recently, not only underrepresented in numbers, but also always in the lowest job categories.

Now, we've gone over this in the Rules Committee time after time with respect to several of our state agencies. We've had a very able attorney, Mr. Torres, who's come in quite often to hammer at us to make sure we try to do something to improve that record in the various agencies.

Now, it says here that in 15 years, hiring rates of African-American and Asian employees had outpaced parity, while hiring rates for Hispanic employees lags behind. In particular, Hispanic women continue to be hired into the lowest paying job categories. There's actually been a decline in the rate of hiring in the same occupational categories.

The first study I referred to was done in 1976, and it seems that things haven't improved much since then.

Now, I don't know how long you've been on the Board.

MR. VILLALOBOS: Four months.

SENATOR PETRIS: So, you haven't had a chance to turn that around, if you were inclined.

Has any of this come to your attention in the short time you've been on the Board?

MR. VILLALOBOS: Yes, sir, it has. In fact, I reviewed our affirmative action plan. And quite frankly, I have concerns in that regard as well, and I plan to bring certain ideas to the Board at our subsequent meeting.

I've already brought things before the Board that the Board has been very helpful in listening to. They are certainly not adverse to trying new things and experimenting. In fact, several of the Board members have told me from to time that they would like to do a demonstration project if it would help improve our situation.

SENATOR PETRIS: Does that mean that your review leads you to the same conclusions as the report I've just cited?

MR. VILLALOBOS: Yes.

SENATOR PETRIS: That there's a lot of underrepresentation and underpayment as well?

MR. VILLALOBOS: Yes, there is. And I feel that that has to be improved, and I'm committed to that improvement.

SENATOR PETRIS: There's a discussion of a policy change. I don't know whether it's actually been done. It's a policy to change the definition of the base against which minority hiring is measured from a representation in the general labor market to relevant labor market.

It seems to me that narrows the base enormously. Are

you in favor of going in that direction?

MR. VILLALOBOS: Actually, we just had a substantial discussion on that regard, and the Board voted unanimously to postpone indefinitely any further discussions because we don't think it's warranted at this time.

SENATOR PETRIS: I see. Was that recently?

MR. VILLALOBOS: Yes, it was the last Board meeting.

SENATOR PETRIS: I guess if it's a unanimous vote it includes yours?

MR. VILLALOBOS: That's right.

SENATOR PETRIS: So what happens in the meantime? Anything?

MR. VILLALOBOS: Well, the issues that were brought forth were more regarding whether or not we might have a legal problem based on some decisions that were made in other district courts. But since we have received nothing from the Ninth Circuit Court, which basically would affect us, we don't see any reason at this time to go forward regarding any changes.

SENATOR PETRIS: In the meantime, you're working to improve the underrepresentation of Hispanic women?

MR. VILLALOBOS: We need to. We need to be more aggressive.

SENATOR PETRIS: Do you have information on why this is so? It could be there just aren't enough women applying. That's happened in the past, too.

MR. VILLALOBOS: Well, the Board has formed a task force. As a matter of fact, they're going to report to us -- I believe it's either in September or October. We've asked them

to get together with all the departments and analyze why these type of underrepresentations occur. And they're supposed to report back to us as to what they've discovered.

SENATOR PETRIS: Now, in the budget cuts, the Agency has loss some of the managers who were responsible for monitoring affirmative action. With those cuts in place, you have less people trying to do the job.

Do you still think it can be turned around with less people working on it?

MR. VILLALOBOS: Well, budget cuts for this very small Board has been pretty brutal, as you know, in the figures. I think our General Fund allocation is something like around $7 million, when at one time it was like $21 million.

However, our staff is a very committed group of people, and they're working very hard to follow the directions of the Board. I have sensed no reluctance to follow whatever lead we wish to take in a particular area.

And I assure you, if such a reluctance were to develop, I would be firmly against it. I have no problem pushing our employees to do what the Board wants to do.

SENATOR PETRIS: Among those that suffered the cuts within the Department is the Career Opportunity Development Program. That had a lot of hope and promise when it started. That's been cut back severely.

MR. VILLALOBOS: Yes.

SENATOR PETRIS: It seems to me that and the other ones, the HELP program and the LEAP program for the disabled, those were all very substantially hit by the cuts.

Do they have enough people left to do the job, to be effective?

MR. VILLALOBOS: Well, a little more money would certainly help, but the programs are not crippled. They are moving forward, and we certainly are pushing those programs. We think they've been extremely helpful.

We have a hearing coming up regarding the LEAP program, which there are some major concerns about, and we're studying that at this point.

SENATOR PETRIS: Do the Board members express their concerns directly to the Governor, or is that just done through the Chairman or through one person?

MR. VILLALOBOS: No, we're independent. We can do whatever independently we wish to do, but only a majority can speak for the Board, and we have a Board President who speaks for that Board.

But I've seen no reluctance of any Board members to speak out. I certainly feel that the five Board members today are an extremely independent group, and they certainly speak their minds on individual cases as well as public policy issues.

SENATOR PETRIS: Does that include speaking to the Governor?

MR. VILLALOBOS: As far as -- I can only speak for myself. I have no problem speaking direct to the Governor on any issue, and I will do so, including issues that he and I may disagree on.

SENATOR PETRIS: Have you asked him for more money?

MR. VILLALOBOS: No.

SENATOR PETRIS: Well, I can see why. It's kind of futile. The man has had a horrible problem. I'm not picking on him. He has very tough choices to make in cutting, but it shouldn't restrain us from asking.

We in the Legislature ask him all the time.

MR. VILLALOBOS: Actually, we were going to ask you for more money.

[Laughter.]

SENATOR PETRIS: Well, that's part of it, but if you can make sure that it won't be vetoed when it gets to him, you know.

I would recommend you work on the Governor. I mean, you have his confidence. He appointed you. He obviously holds you in high esteem. It's quite a distinction, out of all the 31 million people in this state -- they're not all eligible, but I mean, it's a big state -- to be one of the very few appointed to a board of this kind.

I would hope you would include among your conscientious duties the right to consult with the Governor when you think it's necessary to get help in that way. I would encourage you to do it.

MR. VILLALOBOS: Well, Senator, if the Legislature in its wisdom were to raise our budget, I assure you that I personally would back such a thing, and I would speak directly to the Governor and write him on that.

SENATOR PETRIS: I appreciate that, but the budget starts in the Governor's Office, so he hands it to us. So, if you could get it in there before he hands it to us, it would be

even better. Okay?

MR. VILLALOBOS: Okay.

SENATOR PETRIS: Thank you.

SENATOR CRAVEN: Thank you very much. Senator Ayala.

SENATOR AYALA: Mr. Villalobos, what do you see as the most pressing major issues before the Board today?

MR. VILLALOBOS: I would say that the new budget implementation certainly limits our resources to do our job. I think across state government, we may be faced with having to downsize departments and personnel requirements, and that's a very difficult thing.

SENATOR AYALA: You feel fiscal matters are the most pressing?

MR. VILLALOBOS: Well, the fiscal matters because of the lower revenue stream is really going to have an effect on personnel. It's also going to have an effect on those very positive program which we initiated, or the Legislature has initiated, which cost money to implement.

SENATOR AYALA: What are your general views on affirmative action? Do you believe in quotas and all that good stuff?

MR. VILLALOBOS: I don't believe in quotas per se, but I'm big supporter of affirmative action. I certainly have supported common sense goals for as long as I can remember. I've served on numerous affirmative action committees. I'm a big supporter of affirmative action.

I believe that we've got to include our diversified population in every way we can.

SENATOR AYALA: You don't support necessarily the quota system?

MR. VILLALOBOS: No.

SENATOR AYALA: What is your opinion on drug testing of employees? Do you have any reservations about that?

MR. VILLALOBOS: When it comes to positions which involve public safety, I am a very firm supporter of drug testing, and I have so voted on several occasions when drug testing recommendations have come before our Board. I believe on many occasions, it's vital for the safety of the public.

SENATOR AYALA: What would you like to see to prevent abuse of drug testing requirements? You know, protections for the rights of individuals. Do you have any suggestions along those lines?

MR. VILLALOBOS: Well, it depends. First of all, in our process it's very important for the applicants to be honest and truthful and to disclose certain things. And in that process, if those disclosures are made, it eliminates the majority of the problems.

In some areas where, for example, working electrical wiring, or driving a very large heavy equipment truck, working on a road, this involves more than that one individual. I believe in privacy to a very great extent, but when you're driving a school bus with 30 children, or when you're piloting an airplane, there's a big difference.

SENATOR AYALA: All those people that are involved in public safety should be tested.

MR. VILLALOBOS: Absolutely.

SENATOR AYALA: What kind of monitoring of testing, drug tests, do you think should be done by the state, if any?

MR. VILLALOBOS: You know, I'm not familiar with the exact drug testing procedure, other than we have allowed drug testing of certain categories and positions.

But if you like, I'd be happy to look into the details of what the actual drug test is.

SENATOR AYALA: We're told that the use of the sanctions process is an adequate way to ensure that affirmative action goals are achieved at a, quote, "reasonable pace".

What does that mean, "reasonable pace"? How do you describe that?

MR. VILLALOBOS: Well, it all depends on who's describing "reasonable pace". We all have different opinions.

SENATOR AYALA: I'm asking you.

MR. VILLALOBOS: If it was up to me, I would have moved to fix things 20 years ago. We're behind the times, quite frankly. We need to up our involvement of certain diverse groups which are underrepresented.

But as you know, we have a Civil Service system. One of my responsibilities is to protect that system, and we have to work within that system. And that's the way we're basically trying to achieve that goal.

SENATOR AYALA: So, we're behind and we've got to catch up.

MR. VILLALOBOS: Absolutely.

SENATOR AYALA: Thank you.

SENATOR CRAVEN: Very well.

Senator Beverly, you're the only other one. Do you have any comment at all?

SENATOR BEVERLY: No comment.

SENATOR CRAVEN: We thank you, Mr. Polanco.

I was going to call for anyone in the audience, and I think that's what you're telling me.

ASSEMBLYMAN POLANCO: Thank you very much, Senator.

SENATOR CRAVEN: This must be Mr. Ali. Would you please come forward.

MR. ALI: Mr. Chairman and Members of the Committee, my name is Saeed Ali. I represent California Community College Educators of New Californians, an association of 17 community colleges in Southern California: Santa Barbara, Ventura, all nine colleges in Los Angeles, Cerritos, Santa Monica, Glendale, Pasadena, Long Beach, and Rancho Santiago.

We're here in support of Mr. Villalobos for a number of reasons. Two of our reasons that were brought up in testimony, one regarding the inclusion of people we call New Californians, immigrants into the state services.

Currently, a significant underrepresentation exists for the population. One population that was noted was Latinas. We feel that the direction that Mr. Villalobos plans to take is one that we support. It's an equitable position. It's a position of fairness and encouragement.

We on the supply side feel that with proper encouragement, without enormous changes in the current policies but with the proper encouragement and education, this new population will receive fair treatment and will become part of

our workforce.

The second reason is that we have on record Mr. Villalobos's commitment to working with New Californians. He has been enormously helpful over the past three years in helping us administer the amnesty education program that dealt with 1.6 million people who were legalized through the IRCA process.

So, we have a record, and his experience shows us that he will be fair, and he will give us equitable treatment.

SENATOR CRAVEN: Thank you very much sir.

Is there anyone else in the audience wishing to comment either way? Yes, sir, if you'd come forward, please, and state your name for the record.

MR. TREECE-SINCLAIR: Mr. Chair, thank you.

SENATOR CRAVEN: Yes, sir, you're welcome, sir.

MR. TREECE-SINCLAIR: Members of the Committee, my name is Les Treece-Sinclair. I'm the Co-Chair of the California Coalition of Minorities, Women, and the Disabled, which is a coalition of the different state government advocate organizations, including: Black Advocates in State Service, BASS; APSEA, which is the Asian-Pacific Island State Employees Association; AISEC, the American Indian State Employees Association; CAFE, Californians Advocates For Equity; and Disabled in State Service.

The different member organizations of the California Coalition have asked if I would be here and offer a few comments today.

We come here not in opposition to the appointment of Mr. Villalobos, but rather to reaffirm the Coalition's

1 commitment to a strong and effective Civil Service system; to
2 reaffirm our commitment to work toward an effective equal
3 opportunity/affirmative action program in this state.
4 At the same time, we do need to state that we, too,
5 have some concerns which were touched briefly upon by Senator
6 Petris, some concerns of recent actions that had been considered
7 by the State Personnel Board in the form of proposals that would
8 have changed the basis for affirmative action goal setting.
9 I'm pleased to hear that that proposal has been
10 tabled indefinitely, but again, it has only been tabled. We
11 certainly would like to see consideration that would lead to it
12 being dropped altogether.
13 It's not our purpose to be here today to discuss
14 these points at great length, but there were other proposals
15 that were part of that same package that will affect state
16 employees who have disabilities. Some of the proposals are very
17 positive, but others, frankly, will be detrimental.
18 There are other issues that must be addressed, and
19 they have been spoken to briefly: the viability of the State
20 Personnel Board itself; the overall adequacy of its resources to
21 do an effective job in terms of oversight responsibility with
22 state agencies to make sure that they are indeed implementing
23 the state's affirmative action program; the overall programmatic
24 and philosophical commitment of the Board for the continuation
25 of an affirmative action program.
26 Again, we're very pleased to hear many of the
27 comments from Mr. Villalobos.
28 I would like to state to the Committee that the

1 Coalition of Minorities, Women and the Disabled extended an
2 invitation to Mr. Villalobos and to Ms. Bos to meet with us
3 prior to the confirmation hearings. Unfortunately, our
4 schedules did not allow that to happen, but I'm also very
5 pleased to report that they have indicated, again, that they
6 would be very willing meet with us during the summer recess. It
7 is an arrangement that, indeed, we will follow up on because we
8 would like to discuss some of the concerns I just briefly
9 mentioned in much more detail.
10 Again, basically we are here to offer our support,
11 our continued commitment to work with the State Personnel Board
12 its staff, its members, to address concerns. And while we're
13 here to be supportive today, we do not want to minimize the
14 concerns that we have about the Board and some of its programs
15 and its future viability. These are important issues, and we
16 are pleased to see people of the caliber of Mr. Villalobos being
17 appointed to help address those issues, and we welcome the
18 opportunity to work with him in the future.
19 Thank you.
20 SENATOR CRAVEN: Thank you very much.
21 Yes, sir.
22 MR. SIFUENTES: Thank you very much. My name is
23 Robert Sifuentes. I am President of Capitol City's Chapter of
24 Personnel Management Association of Aztlan.
25 PMAA is an association of human resource
26 professionals dedicated to the enhancement of employment and
27 economic opportunities for Latinos.
28 We also are concerned about some of the main issues

that Mr. Treece-Sinclair has indicated this afternoon, and we also support his position and would look forward to working with the new members of the Board in trying to address some of the critical problems that are facing Hispanics and Latinos in seeking employment, and retention, and promotion within the State Civil Service system.

Thank you very much.

SENATOR CRAVEN: Thank you very much, sir.

Anyone else who wishes to comment? There appears to be none.

SENATOR AYALA: Mr. Chairman, I move that we recommend the confirmation of Mr. Villalobos as a member of the State Personnel Board.

SENATOR CRAVEN: Senator Ayala moves. Call the roll, please.

SECRETARY WEBB: Senator Ayala.

SENATOR AYALA: Aye.

SECRETARY WEBB: Ayala Aye. Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Beverly Aye. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Petris Aye. Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Craven Aye. Senator Roberti.

Four to zero.

SENATOR CRAVEN: Congratulations, the confirmation is to the Floor. Thank you both so very, very much.

Ms. Bos, would you come up, please. Next we have

Florence Susan Bos, a member of the State Personnel Board. And she will be accompanied by Mr. Bud Carpenter, who, I'm sure, will introduce her.

MR. CARPENTER: Yes, thank you, Mr. Chairman and Members of the Committee.

My name is Bud Carpenter. I'm the current President of the State Personnel Board.

I'm here to support the confirmation of Mrs. Bos. I first met Flos in San Francisco about a year and a half ago at San Francisco State University when a scholarship fund was being set up for her husband, Otto Bos. It was a very important meeting for both of us, my first time to meet her. But Clair Burgener, who was in her position at that time, also introduced us, and she took an interest in the work of the Board almost from that time on, when she knew Clair was going to go and she was in San Diego. So, she familiarized herself with our procedures, and she had a really good background in personnel, which her resume and she will tell you about now.

She tends to be even more nervous than I am, and so she isn't really. She's very competent, very capable. I'm sure she can answer all your questions that you may have.

Florence, if you'll go ahead now.

SENATOR CRAVEN: You're among friends.

MR. CARPENTER: Answer the main question that Senator Craven will ask.

MS. BOS: Which is, why am I qualified.

SENATOR CRAVEN: That's right, exactly.

MS. BOS: I'm asking the question myself, okay.

Members of the Committee, thank you for this opportunity to discuss my appointment to the State Personnel Board. I believe my background in both the public and private sector will serve me well in this position.

To begin with, I have a Bachelor of Arts Degree in Public Administration with an emphasis in Personnel Management conferred with distinction from San Diego State University. In addition, I served with the Administrator for Management Services in the U.S. Department of Education. During this time, I was able to work in and observe operations of a governmental organization.

In previous service with Aztec Shops at San Diego State University, I managed the personnel system for this enterprise. This gave me direct exposure to the establishment of job classification systems, one of the responsibilities of the State Personnel Board, as well as all aspects of establishing and managing a personnel system in order to obtain, utilize, and develop human resources.

In my current role as the Director of the San Diego State University Elder Hostel, I have had to utilize my expertise to deal with the duties of a personnel administrator as well as the day-to-day management issues facing a director of a self-funded college for seniors program.

I believe I'm ready to assume the responsibilities as a member of the State Personnel Board. According to its President, I have served with distinction for the past six months. I take my responsibilities very seriously and have done so even prior to my appointment. At that time I had the

privilege and pleasure to work with Clair Burgener in preparation for my appointment in January of 1993.

The work since then has been voluminous and focused, challenging and interesting, and I would be honored to receive your vote of confidence for this position.

Thank you.

SENATOR CRAVEN: Thank you very much.

Anyone have any questions of Ms. Bos? Looks like you just took them by storm.

SENATOR AYALA: I'd like to ask you the same questions --

SENATOR CRAVEN: Yes, Senator Ayala has something.

SENATOR AYALA: -- I asked Mr. Villalobos.

What are your general views on affirmative action? How do you think it should work, and is it working?

MS. BOS: I believe that it is working.

SENATOR AYALA: You believe it's working?

MS. BOS: We have a ways to go yet, but it is working.

SENATOR AYALA: You don't support a quota system --

MS. BOS: No.

SENATOR AYALA: -- for minorities

MS. BOS: No, goals, not quotas.

SENATOR AYALA: And what is your opinion on drug tests of employees, state employees? What can we do to make sure we prevent the abuse of testing requirements?

MS. BOS: Well, I would agree with what Al Villalobos said, that I think it's important --

SENATOR AYALA: I'm sorry?

MS. BOS: I would agree with what member Al Villalobos just said. I think it's important for public safety personnel to be drug tested and any state employees who work where it may be unsafe for them to be involved with drugs.

SENATOR AYALA: Do you feel that these employees that are involved with the safety of people should be tested?

MS. BOS: Yes.

SENATOR AYALA: What do you think is the major issue facing the Board today, or issues?

MS. BOS: Well, I guess the main one is how to survive on such a small budget, and how to do the job that we're supposed to do. That's really a challenge.

SENATOR AYALA: You feel like Mr. Villalobos, that fiscal matters of today are causing a problem for the functioning of your department?

MS. BOS: Yes, I do.

SENATOR AYALA: Thank you.

SENATOR CRAVEN: Very good, anyone else?

I don't think there's anyone else from the audience, is there? There appears to be none.

SENATOR BEVERLY: I move we recommend confirmation.

SENATOR CRAVEN: Very well, Senator Beverly moves.

Would you call the roll, please.

SECRETARY WEBB: Senator Ayala.

SENATOR AYALA: Aye.

SECRETARY WEBB: Ayala Aye. Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Beverly Aye. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Petris Aye. Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Craven Aye. Senator Roberti. Four to zero.

SENATOR CRAVEN: To the Floor.

MR. CARPENTER: Thank you very much, gentlemen.

SENATOR CRAVEN: Congratulations.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 3:03 P.M.]

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I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of July, 1993.

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STATE OF CALIFORNIA

HEARING

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, AUGUST 18, 1993

2:10 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chair

SENATOR WILLIAM CRAVEN, Vice Chair

SENATOR RUBEN AYALA

SENATOR ROBERT BEVERLY

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

DONALD L. NOVEY, Member
Industrial Welfare Commission

SUSANN WILLIAMS-BLAIR, Member
Public Employment Relations Board

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--oo0oo--

CHAIRMAN ROBERTI: Mr. Novey has very patiently been waiting, so please come forward, appointee of the Governor to the Industrial Welfare Commission.

We all know you well, but you might tell us why you feel you're qualified to assume this position. I think you're the labor representative, are you?

MR. NOVEY: That's correct, Senator Roberti.

Members of the Committee, I'm Don Novey, State President of CCPOA, California Correctional Peace Officers Association.

September 29th is the birthday of Lech Walesa, and I'd like to see, maybe, a resolution on his behalf in the State Legislature as well. He's a well-known labor leader who's an inspiration to myself.

I know we also have had some great Greek labor leaders out of the Bay Area, but this is something that's been near and dear to my heart for many years, and I've never sought an appointment that I would receive remuneration for, and I don't think I ever will.

The labor climate is quite difficult in the United States and in the State of California. Just me being up here is probably reflective of the labor climate going to the bottom of the barrel. With that in mind, I think I can do a good service for the labor people of the State of California, and I think I've reflected that with my presence on that Board presently and in the past eight months.

CHAIRMAN ROBERTI: Thank you. Turn the barrel over, and you're at the top.

SENATOR AYALA: Question.

CHAIRMAN ROBERTI: Yes.

SENATOR AYALA: Mr. Novey, you're a career correctional officer.

MR. NOVEY: Unfortunately.

SENATOR AYALA: How did that prepare you for this position?

MR. NOVEY: It's a very good question, Senator Ayala.

In 1973, approximately 20 years ago, before we had the Peace Officers Bill of Rights, I was asked to step forward for my fellow peace officers, male and female, on the line in reference to their representation. I've been doing it for the last 20 years.

SENATOR AYALA: What is your interpretation of IWC's mission and your role as a member of that commission?

MR. NOVEY: Of the Industrial Welfare Commission, sir?

SENATOR AYALA: Yes.

MR. NOVEY: Well, I think as a strong labor representative with a pragmatic view to the 21st Century, I know we're having some difficulty in reference to the economic climate in California, and I think there has to be a positive interaction between line labor and, of course, the management structure in the State of California.

SENATOR AYALA: What are the major issues before that before today, in your opinion?

MR. NOVEY: The major issue as of now, and we have one more hearing -- we're in our third hearing as of this Friday in San Francisco -- and that's the minimum wage issue.

SENATOR AYALA: What aspects of the California labor conditions would you like to see the IWC review or act upon while you're a member of that commission?

MR. NOVEY: Well, basically the minimum wage, I think, has to be addressed in the State of California. The minimum wage I think is the major concern, has been historically.

The structure is very difficult in reference to our present economic climate. That has been testified to in our last two hearings within the last month.

Senator Ayala, the minimum wage has risen in the last 11 years approximately 90 cents in the State of California. And I think we also have to address that issue, and also understand the plight of business in the State of California. So therefore, I consider that the number one item we're facing at the Industrial Welfare Commission.

SENATOR AYALA: I have no more questions, Mr. Chairman.

CHAIRMAN ROBERTI: Thank you, Senator.

Senator Petris.

SENATOR PETRIS: Move.

CHAIRMAN ROBERTI: Senator Petris moves confirmation do pass.

Anybody else? Anybody here in opposition?

Better call it while the going is good. Secretary

will call the roll.

SECRETARY WEBB: Senator Ayala. Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Beverly Aye. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Petris Aye. Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Craven Aye. Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is four to zero; confirmation is recommended to the Floor.

MR. NOVEY: Thank you.

CHAIRMAN ROBERTI: The next appointment is Susann Williams-Blair, Member of the Public Employment Relations Board.

MS. WILLIAMS-BLAIR: Thank you.

CHAIRMAN ROBERTI: We will ask you the same question we ask all the Governor's appointees, and that is why you feel you're qualified to assume this position?

MS. WILLIAMS-BLAIR: Thank you, Mr. Chairman and Committee Members.

First of all, I think talking about my interests and my qualifications go together. I'm particularly interested in the appointment to this particular board because my career has spanned more than 25 years in labor relations and the collective bargaining environment in government, both at the local level, state level, a quasi-local level, and then in private industry.

An appointment to the board and to function in the neutral or impartial role on that board, I think, is, one, it's

an honor to be asked. And it would allow me to pull together that more than 25 years of experience and apply it in a public policy role on the board, and I think I have, by my background, some unique experience to do that.

In addition, my experience spans a fair amount of management, having been a deputy city manager in the City of San Diego, and a department head in various agencies. And I think that experience will serve me well on the board, as well as the present Chair designate as we basically attempt to live with the reduced resources. A year ago, more than an 18 percent budget reduction, and for this fiscal year, 15 percent. I think my experience and ability in managing change and being a problem solver will be -- would allow me to contribute to the board and to the staff and the agency as a whole.

So, I'd be very pleased for your favorable consideration as a board member of the Public Employment Relations Board. Certainly, I'm happy to answer any questions you may have.

CHAIRMAN ROBERTI: Thank you very much.

Is there any discussion or debate?

Any opposition?

SENATOR CRAVEN: Move.

CHAIRMAN ROBERTI: Senator Craven moves the confirmation be recommended to the Floor.

Secretary will call the roll.

SECRETARY WEBB: Senator Ayala.

SENATOR AYALA: Aye.

SECRETARY WEBB: Ayala Aye. Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Beverly Aye. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Petris Aye. Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Craven Aye. Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is five to zero; confirmation is recommended to the Floor.

Thank you very much.

MS. WILLIAMS-BLAIR: Thank you very much.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 4:10 P.M.]

--oo0oo--

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SENATE RULES COMMITTEE

STATE OF CALIFORNIA

HEARING

STATE CAPITOL

ROOM 3191

SACRAMENTO, CALIFORNIA

WEDNESDAY, AUGUST 25, 1993

4:15 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chair

SENATOR WILLIAM CRAVEN, Vice Chair

SENATOR RUBEN AYALA

SENATOR ROBERT BEVERLY

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

SENATOR GARY HART

PAUL M. RELIS, Member
California Integrated Waste Management Board

SENATOR TOM HAYDEN

KATHY DRONENBURG, Member
State Board of Education

WILLIAM P. DUPLISSEA, Member
Occupational Safety and Health Appeals Board

CARL BRAKENSIEK
California Society of Industrial Medicine
and Surgery

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CHAIRMAN ROBERTI: We will go to Governor's appointees. The first is Mr. Paul M. Relis, Member of the California Integrated Waste Management Board.

Senator Hart is here. Senator, are you introducing Mr. Relis?

SENATOR HART: Yes, I'd like to just make a brief statement on Mr. Relis's confirmation.

CHAIRMAN ROBERTI: Please come forward, Mr. Relis.

SENATOR HART: I wanted to urge the Members of the Committee to support Mr. Relis's confirmation. He's from Santa Barbara and someone that I've known for more than 20 years who served with great distinction in our community as both a civic leader and someone who's been involved in environmental causes over this time period.

He really combines, I think, two very important features that we need to have more of in the state government. One is, he's a visionary. He's someone who is really before his time on many environmental issues, particularly relating to recycling and disposal of hazardous waste; something that all of us are now aware of. He was fighting that battle 20 years ago in Santa Barbara and was really a pioneer in the establishment of source reduction and recycling programs in our community.

But in addition, he has had a practical ability to work closely with people, and business, and nonprofit organizations, public and private sector, to get things done. He helped establish an organization called the Community

Environmental Council. It's a thriving organization in our community that has more than 50 employees, generates revenues of close to $5 million per year. And what we're attempting to see take place under AB 939 to reach these ambitious recycling goals that the State of California has put forward, Mr. Relis has been involved for many, many years in developing successful, effective practices along those lines in our community.

So, serving on this Board with that kind of vision and that kind of practical successful experience, he brings to the Board the knowledge that I think we very much need in people who serve in these kinds of positions. So, I want to urge the Members to support his nomination.

Quite frankly, why I'm here today is that I don't think there would be any question about his nomination except for the fact that there have been recent press reports concerning the travel arrangements that Mr. Relis and other members who serve on state boards have, where they are able to maintain their residences and also work for the State of California.

And I just want to mention to the Members of the Committee that what Mr. Relis is engaged in has been consistent with practices and procedures that have been adopted by the state board and the various boards that make these kinds of determinations, and that when he was seeking this position, made it very clear that this was his preference, and inquired as to whether or not that this would be appropriate, and was told that it was.

As a result of these recent press reports, there is a

change in policy underway in the Wilson administration. Given the fiscal realities that we live under, it's not surprising that some revision of the policy may be appropriate, and it's my understanding that Mr. Relis is certainly willing to abide by those new policies, just as he has abided by the policies under which he was originally appointed and, I might add, by which other members of state boards in the State of California have also pursued in terms of travel and commuting arrangements between their homes and Sacramento.

With that, I'd like to introduce Mr. Relis and hope that the Members will support his confirmation, because he has been an outstanding member of our community. And in the brief time that he has served on the Integrated Waste Management Board, has served with distinction and has provided great leadership to that Board.

CHAIRMAN ROBERTI: Thank you very much, Senator.

Mr. Relis, we'll ask you what we ask all the Governor's appointees: why you feel you're qualified to maintain this position, and also maybe speak to the issue of the travel question that has come up.

MR. RELIS: Thank you, Mr. Chairman and Senators.

As you may know -- and thank you, Senator Hart -- I have over 20 years' experience in the areas of the -- that come under the purview of the Waste Management Board, and in addition, a broader set of environmental background experience.

I'm here before you seeking my second confirmation as a member of the Board. I've now served two years as Chairing the Planning Committee, the Market Development Committee, and I

serve on the Permits and Enforcement and Policy Committees.

I'd like to briefly highlight what I think are my accomplishments to date. As Chair of the Planning Committee, I led the Board's effort to resolve the thorny question of what counts towards the 25 and 50%. We had many complaints that the system was too cumbersome and too costly. Through the work of the Planning Committee, we resolved that issue, I believe. That is now reflected in AB 2494 that was passed last year. This will reduce significantly the cost to local government of implementing AB 939, while maintaining the integrity of the waste reduction and recycling programs.

As Chair of the Market Committee, I led the Board's effort to define its market development goals and objectives for creating markets for the 20 million tons, or thereabouts, of solid wastes we are seeking to divert.

I have plans, the Board's Market Development Plan, which I'll enter into the record. I left it back at my chair.

I initiated the Board's effort to define the job-creating potential of implementing AB 939. Our research suggests that up to 20,000 manufacturing jobs and additional 25,000 collection and processing jobs can be created in our state through implementation of this law if we have a jobs focus on it.

As proof of the job-creating potential of the Board's work here, we have designated 17 new recycling market zones throughout the state to attract additional recycling businesses and ventures. We have approved loans of $7 million for the recycling businesses and are laying the groundwork for new jobs

in diversion.

Fourth, I've led the Board's effort to attract new recycling industries to California, working with other state government agencies, large and small industries in paper, plastic, steel, rubber, oil, and other materials. I've personally met with dozens of these companies and seen to it that our staff do all they can to assist such manufacturers to locate in our state in accordance with our environmental protection standards.

As a Board member, I have pushed for the reorganization of our Board to reflect the AB 939 hierarchy, which gives preference to waste reduction and recycling, and then landfill, in that order.

CHAIRMAN ROBERTI: Could I interrupt you, Mr. Relis.

MR. RELIS: Yes.

CHAIRMAN ROBERTI: As is the case at the end of a two-year session, the Rules Committee agenda becomes enormous. This is not dealing specifically with you.

We have five appointees today. Mr. Relis, Ms. Dronenburg, and Mr. Duplissea we will take up today. The Rules Committee will meet both tomorrow and Friday to take up the other matters.

Mr. Foley and Mr. Lormon will be taken up Friday. My apologies to both of them, but the calendar is just going to be too large. I know in both cases you've come here from San Diego, but I don't know how else to accommodate you and try to maintain some kind of calendar.

The other items on both our executive and our open

1 session will be taken up Thursday and Friday. We'll try to make
2 the Friday session, however, primarily for Mr. Foley and
3 Mr. Lormon.
4 Do any Members have a problem with that?
5 Okay, then we'll return. Mr. Relis, thank you.
6 Sorry I interrupted you.
7 MR. RELIS: Am I going over?
8 CHAIRMAN ROBERTI: No, you're fine.
9 MR. RELIS: All right.
10 What I was concluding on that point is that we have
11 reorganized our Board to reflect the priority of the law. It's
12 taken longer than I would have hoped, but that is now in effect,
13 and I think I've had some significant contribution to that.
14 Sixth, while serving on the Board, I've also
15 represented California on several federal efforts that bear on
16 the Board's work. In 1992, I accepted the Chair of the U.S.
17 EPA-sponsored Recycling Coalition, Recycling Advisory Council.
18 RAC, whose members have included U.S. Senators, has been working
19 on a national effort to develop markets for secondary materials
20 collected as a result of national recycling efforts. I continue
21 to serve and chair that subcommittee.
22 Secondly, I've been on a national basis serving on
23 the Congressional U.S. Office of Technology Assessment, which
24 will soon release a report to the Senate Foreign Relations and
25 Finance Committee on American business and the environment.
26 This report evaluates the relationship between our environmental
27 regulatory structure in the U.S., and how this impacts the
28 competitiveness of American business in the $300 billion

international environmental marketplace, of which California is a key player.

Last --

SENATOR PETRIS: Excuse me.

Who's issuing that report?

MR. RELIS: The U.S. Congress Office of Technology Assessment.

SENATOR PETRIS: Thank you.

MR. RELIS: Last, I would like to point out, I believe that I've worked closely with many members of both the Senate and Assembly on a wide range of waste management issues during my two-year stint with the Waste Board, and that concludes the background.

I would like to make a short statement on my travel, per diem, and office issues.

First, I would like to note that I served a very short appointment. When I was appointed to the Board, there was only 16 months remaining on my appointment term of a two-year term before this kicked into a three-year term.

I was very concerned about the terms of my employment during that initial short period. In that regard, I sought legal advice from the Board's attorney on state policy regarding travel, per diem, and inquired as to the terms and conditions of other Board members and commissioners to commuting to and from Sacramento. Based on that information, which was set forth to me in administrative manner, I declared my designated headquarters as Santa Barbara, an action consistent with the other commuting member of our Board, and with other boards and

commissions, as I understood it.

The fact that I was commuting and receiving travel and per diem was never hidden from anyone. I understood it to be an established, accepted practice for the appointees on boards and commissions.

Since several Board members and commissioners had gone through confirmation, including myself a year ago, and no concerns were raised, the issue had not come up, I did not realize this was the issue that I now understand it to be.

As for my office, I was informed that since I would be spending the bulk of my time based in Santa Barbara, I was allowed office space. I initially worked at that time out of my home. In an attempt to avoid incurring costs, which I -- well, I asked General Services to determine if any surplus state office space was available in the Santa Barbara to Ventura area. Only after they determined that there was none -- we tried the University, other locations -- the Department of General Services then went through a formal procurement to obtain space.

In response to the concerns that had been raised over this point, I have directed our Executive Director to initiate closing the office as soon as they can do it, and will be establishing my headquarters in Sacramento to address the travel and per diem concerns consistent with what I now understand to be a new policy that has come forth from the Governor's Office.

CHAIRMAN ROBERTI: Thank you.

Now, as I understood it when Senator Hart spoke, the travel policy in the Governor's Office, and the one to which you apprised the Governor when you were appointed, was that your

headquarters would be in Santa Barbara, and that they were fully apprised of that when the appointment was made.

MR. RELIS: As far as I understood.

CHAIRMAN ROBERTI: There would be travel and per diem while you were in Sacramento.

MR. RELIS: Yes, but the bulk of this was handled administratively within the Board, because I did not -- I made it clear that I was going to be commuting.

CHAIRMAN ROBERTI: Now, in '91-92, you spent 114 days in travel to Sacramento. However, in '92-93, as I have it here, it was 211 days in Sacramento.

MR. RELIS: No, I don't think that figure,, the latter one, is --

CHAIRMAN ROBERTI: Maybe I'm wrong. No, I'm sorry; I'm adding them up.

MR. RELIS: It's 97, I believe.

CHAIRMAN ROBERTI: Fine. That's not more than half, where it would be a little bit hard to explain your headquarters somewhere else. Okay, fine; no problem.

Senator Ayala.

SENATOR AYALA: There is a move afoot to change the policy that you're working under today?

MR. RELIS: I have -- Senator Ayala, I'm aware that there is a statement that has been issued from the Governor's Office. I don't have that statement.

MS. MICHEL: From the Department of Personnel Administration. It's a new policy.

SENATOR AYALA: These changes, the Governor or the

executive branch makes these changes in the policy, or is that the Legislature?

MS. MICHEL: It's through the Department of Personnel Administration.

SENATOR AYALA: They will make the changes so that the problem that you encountered won't happen.

MR. RELIS: As I understand it, I will be responsible for --

CHAIRMAN ROBERTI: There actually is a problem here, not so much with Mr. Relis, but in general. I mean, we have to economize; it's absolutely imperative.

But there's a problem, and that is that pretty much everybody who works at a high level in state government will have to live in Sacramento. That's very nice, but you should have a little bit of a mix, just as Legislators should be a little bit of a mix. And that does not all come from Sacramento. We really have to live in our districts.

There is a problem, especially that I've noticed over the years, for Southern California. I mean, it is almost a bureaucracy-itis that, you know, what is appropriate in Sacramento is appropriate everywhere. And I've often carried legislation where, I mean, I pull my hair out at the notion of people in government have about Southern California, of Los Angeles, and what our needs are. Sometimes you get the feeling that good government is equated with not doing something that Southern California wants. They're almost synonymous.

I'm not saying that's the case with you, Mr. Relis, one way or the other. But I'm just saying that the fact that

somebody has to travel from his headquarters city to Sacramento, I mean, yes, I think the cost is very important. It doesn't shock me all that much because I do think there is a need for a mix.

I was a little bit concerned when I thought it was 211 days, but that's not the case. It was 97 days.

Senator Hayden is here to speak on the Relis appointment.

SENATOR HAYDEN: Mr. Chairman, Members, I'll be brief.

But I feel that I had an obligation to appear because in June, I wrote a letter to the Rules Committee and to Senator Roberti in particular, asking that Mr. Relis's confirmation be put over until some issues were dealt with.

I believe that with a little more clarification, we'll find that there have been some significant reforms, I think, that have occurred here.

I don't come before you to comment critically on Mr. Relis's person or qualifications, but to say that I think at $93,000 job, which has expenses for an office that totaled $25,000, and per diem $23,000, and air fare $23,000, over about a two-year period is one that should flag our attention. And I understand that the Governor, at least through Mr. Schnur, has said that regulatory changes in this area, Senator Ayala, are ordered on a fast track. So, apparently, there is going to be a rapid change in this policy, which I think is all to the good.

There was one other issue that I wanted to raise that I think has been raised outside the committee process, and that

is Mr. Relis's attendance at a fundraiser by the Wilson administration for the waste collection industry that had a majority of the appointed members of the Waste Management Board, including Mr. Relis, present. That's the Board that oversees the siting of new waste dumps in the Southern California desert. That was on May 11th.

I understand also that the Administration has indicated that that was a, quote, "mistake", and that such policies or practices won't occur again.

If that's correct, and if the Rules Committee has secured those understandings with the Administration, I think this represents a great set of reforms.

With respect to Mr. Relis's environmental qualifications, particularly in the area of recycling, I think that they're very good. I hope that he will take a very critical look at these very big dumps being put in the Southern California desert, but on the recycling issues he's been very good.

But as I say, the travel issue, the per diem issue, the fundraising issues, I think, were worth raising. And hopefully, because of this process, the Administration is changing its policies.

Thank you very much for your time.

CHAIRMAN ROBERTI: Yes, I understand the Administration is changing its policies on both the per diem and on the attendance at campaign events. And I think with the economies we have to effect, we have to look at these travel expenses. But I do stick to my point that there are two sides

of that coin. At some point, we will have everybody living in Sacramento; everybody seeing the world through Sacramento eyes.

And on a whole host of issues -- I've carried fire safety issues for a number of years -- and the treatment you get from the Sacramento bureaucracy is almost that Southern California, at times, would be better off burning. I'm quite serious. I mean, it's just shocking, the attitude.

The only way that that is assuaged at all is if you have a mix of people who are in positions of influence, and some people can't do that if they can't travel.

I'm not making a comment justifying one way or another, Mr. Relis, on the size of your travel, but that's how I've felt for a number of years.

Is there any opposition to Mr. Relis's appointment in the audience?

Do I hear a motion?

SENATOR BEVERLY: Move we recommend confirmation.

CHAIRMAN ROBERTI: Senator Beverly moves confirmation.

The Secretary will call the roll.

SECRETARY WEBB: Senator Ayala.

SENATOR AYALA: Aye.

SECRETARY WEBB: Ayala Aye. Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Beverly Aye. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Petris Aye. Senator Craven. Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is four to nothing; confirmation is recommended to the Floor.

MR. RELIS: Thank you very much.

CHAIRMAN ROBERTI: Mrs. Kathy Dronenburg, Member of the State Board of Education.

We will ask you once again -- you've been before us -- why you feel you're qualified to maintain this position.

MS. DRONENBURG: Thank you, Senator Roberti and other Senators.

I feel like I'm qualified to maintain this position because over the years, I believe that I have demonstrated a deep caring for children, which I have had for a number of years before being appointed to the Special Education Commission, and then subsequently to the State Board of Education.

I also believe that a significant portion of our population is children who have disabilities, and currently there is no one else on the Board of Education who has that background or expertise.

CHAIRMAN ROBERTI: Good point. Thank you very much.

Is there anyone here in opposition to the Dronenburg appointment? I see no opposition.

Any questions from the Members? Senator Ayala.

SENATOR AYALA: What is your official position on the voucher system that is going to face us in November? Can you make an official statement/position on that?

MS. DRONENBURG: I am happy to have the opportunity to say I'm 100% opposed to that particular voucher initiative.

CHAIRMAN ROBERTI: If it passes, what are we going to do?

MS. DRONENBURG: Pray.

CHAIRMAN ROBERTI: Yes, pray; that's right.

Any other observations? Do I hear a motion?

SENATOR BEVERLY: Move we recommend confirmation.

CHAIRMAN ROBERTI: Senator Beverly moves we recommend confirmation. Secretary will call the roll.

SECRETARY WEBB: Senator Ayala.

SENATOR AYALA: Aye.

SECRETARY WEBB: Ayala Aye. Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Beverly Aye. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Petris Aye. Senator Craven. Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is four to nothing; confirmation is recommended to the Floor.

Congratulations.

MS. DRONENBURG: Thank you very much.

CHAIRMAN ROBERTI: William P. Duplissea, Member of the Occupational Safety and Health Appeals Board.

We all know you, but we will ask you the same question anyway: why you feel you're qualified to assume this position?

MR. DUPLISSEA: Well, Mr. Chairman and Members, I appreciate the opportunity to answer that question, and any

1 others that you might have since I am well prepared.
2 I feel I'm qualified for this position for it is a
3 procedural, not a policy, body. And quite frankly, it
4 frustrates me at times when the Board has to make decisions
5 based purely on the actions of a prior proceeding versus what
6 must feel right in one's gut, as it were, especially if that
7 were to let off a bad operator/employer, or on the other hand,
8 uphold the penalty of someone who has done all that he or she
9 can do and has just fallen through the crack in a regulation.
10 But with my background, specifically that of working
11 as a manual laborer, and also as a businessman, and then also my
12 experience as a Legislator, and as the Administrative Director
13 of the Workmen's Compensation System, it's all of those
14 backgrounds I have found in the time that I have been there,
15 since January 19th of this year, to be very valuable in seeing
16 these issues clearly. Though again, having to rely on the
17 procedural aspects rather than the policy aspects, although
18 frustrating, it has given me a certain amount of enlightenment
19 as to how these issues can happen.
20 Specifically, one other thing that I'm anxious to
21 add, and that is I think there are a great many things with the
22 OSHA legislation and regulation that can be changed. As you
23 know, it's a cumbersome process, working through the Department
24 of Industrial Relations, and through the Governor's Office, and
25 on to the Legislature. And I would hope that with my background
26 in the Legislature, that perhaps some of these issues, some of
27 the tightening can happen in a more expedient manner with me on
28 that Board because of my background and my relations with many

of you.

And for that reason, I'd ask for your recommendation.

CHAIRMAN ROBERTI: Thank you very much.

Any comments, questions? Anyone in the audience in opposition? Anyone here in support?

Please come forward, Mr. Brakensiek.

MR. BRAKENSIEK: Mr. Chairman, Carl Brakensiek, representing the California Society of Industrial Medicine and Surgery.

We support Mr. Duplissea for this confirmation and his appointment to the OSHA Appeals Board.

CHAIRMAN ROBERTI: Thank you very much.

I'd also like to make note of the fact that Senator Alquist was here earlier, wanting to introduce the Assemblyman, and could not make it, but he indicated to all of us his support for your candidacy.

Do I hear a motion?

SENATOR BEVERLY: Move confirmation.

CHAIRMAN ROBERTI: Senator Beverly moves confirmation. Secretary, call the roll.

SECRETARY WEBB: Senator Ayala.

SENATOR AYALA: Aye.

SECRETARY WEBB: Ayala Aye. Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Beverly Aye. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Petris Aye. Senator Craven. Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is four to nothing; confirmation is recommended to the Floor.

Congratulations.

MR. DUPLISSEA: Thank you very much, Mr. Chairman and Members.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 5:37 P.M.]

--oo0oo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 26th day of August, 1993.

Evelyn J. Mizak

EVELYN J. MIZAK
Shorthand Reporter

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ALSO PRESENT

JOHN FOLEY, Member
California Regional Water Quality Control Board
San Diego Region

LAURA HUNTER, Director
Clean Bay Campaign
Environmental Health Coalition

MICHAEL PAPARIAN
Sierra Club

JOHN J. LORMON, Member
California Regional Water Quality Control Board
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P-R-O-C-E-E-D-I-N-G-S

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SENATOR CRAVEN: We'll begin today with the Governor's appointees who are appearing today for confirmation. First we have John Foley, member of the California Regional Water Quality Control Board for the San Diego Region.

Mr. Foley, if you will come up here and tell us why you feel that you are qualified for this important position, we would appreciate it.

MR. FOLEY: Thank you, Mr. Chairman and Members of the Committee.

I'm John Foley. This is my third nomination to the Regional Water Quality Control Board in San Diego. I've only had the opportunity to appear here once, this time.

During those seven years, I think I've gained an appreciation for the rather difficult task of carrying out our water quality regulations. We have in that seven-year period issued some 234 orders that involved 29 civil liabilities, 116 clean up and abatement orders, some 48 cease and desist orders, and some 24 time schedules. So, we have had a busy agenda.

My background is, I manage a water district in Orange County, serving approximately 135,000 people. I fill the position of water supply on that regional board.

I have a civil engineering degree and a masters in civil engineering from the Massachusetts Institute of Technology.

I'll be glad to give you more detail if you care, sir.

SENATOR CRAVEN: Very well, thank you very much.

Before we go to the Committee, let me ask, is there anyone in the audience who wishes to speak on behalf of this candidacy? Anyone who wishes to speak in opposition? Fine, come up. State your name.

MS. HUNTER: Good afternoon. My name is Laura Hunter. I work for the Environmental Health Coalition in San Diego, where I'm Director of the Clean Bay Campaign. We watch and work on toxic pollution issues in San Diego Bay. And as part of my position, I attend virtually all, but mainly I watch-dog the Regional Board of San Diego.

I really appreciate the opportunity to come and talk to you today and the special effort that you've made for me to be here.

Everytime an agenda comes out, the statement of the job of the Regional Board comes with the agenda. The first statement is:

> "The primary duty of the Regional Board is to protect the quality of the waters within the region for all beneficial uses."

We are here today because -- to oppose Mr. Foley's reappointment to the Regional Board because it has been our experience, and we have detailed our concerns in letters to all of you, that the Regional Board has not done this. They have not been protecting responsibly the water quality in our region.

San Diego has very many serious water quality problems. Our beaches are closed. In 1991, we had over half of

the beach closures for the entire state. Our bays are posted. Our kelp bed is currently posted right now. There are illegal discharges of sewage sludge going on from the Point Loma treatment plant as we speak.

And you would think that this kind of situation, this water quality degradation, would be addressed with very aggressive action by the Regional Board. Unfortunately, the opposite has been true. Violations continue to go on unaddressed. You'll remember the famous break in the pipe where the affluent met the effluent, and during the America's Cup, was dismissed. We had beaches closed for four months with that break, and it was virtually dismissed with a shrug and a kind of an, "Oh, well," by the Regional Board.

They have allowed a clean-up order that just required monitoring and left PCE in a drinking water designated groundwater basin 80 times above Title 22 standards. They issued a permit that was illegal and forced the EPA, federal EPA, to come to town and take over that permit. And I don't think that's what you had in mind when you created your state MPDS program.

Hiding behind business-friendly rhetoric, they continue to turn their backs on the law. Yes, they have discretion. I understand that. But they also have an obligation to the law as it is written, and that is to protect water quality.

Speaking of compliance, and we want compliance, that is what regulation is for, they have been removed by the FBI from the Hazardous Waste Strike Force. This is a strike force

-- and I could pass a letter that evidences that -- this is a strike force that has been formed of all regulatory agencies to pursue the chronic and the criminal environmental polluters. These are the worst of the worst folk that are impairing our environment. Now our Regional Board is not represented on that very critically important task force.

If you turn the letter over, you will see the letter from Cal-EPA, who was very concerned that this had happened, and we all want to see the Regional Board back on that task force.

In 1987, the Auditor General came and looked at the records of our Regional Board and made the very strong recommendation that they have to be -- they have to do stronger enforcement if we are to get -- well, that was their recommendation.

Nothing has changed. In 1991, EHC did an evaluation of the 19 MPDS permit holders around San Diego Bay. Out of 222 of the violations that we found, two fines had been levied. One percent enforcement is not adequate, and I don't think it's what you had in mind when you created this program.

I want to be very clear that I don't lay the blame for these decisions that I've just been complaining about at the feet of Mr. Foley alone. He has been very active in a leadership role on the Board, but the Board generally votes unanimously. He just had the misfortunate of being the first reappointment up, and we are very committed that we do not support the reappointment of these Board members, given these kinds of decisions. But it is not only his fault, but maybe a ninth of it we would hold him responsible for. We are opposing

the reappointment on these kinds of decisions.

We also believe that as a general manager of a water district, that that is a conflict of interest. And maybe technically, by the letter of the law, it is not, it certainly is not good policy.

I need not remind you that although the regional board members are the nominees of the Governor, they are your representatives, and they are there to carry out the laws that you pass. This is not happening, and I think it seriously undermines the Legislature's efforts to improve the quality of the environment and to reduce the necessity of additional environmental regulations.

It is time for a change, and we are asking for your help.

In closing, I would just like to add, I said it in my letter to you, but I'm going to say it again. I would you ask not to condemn us to four more years of these kinds of water quality decisions and conflicted appointments. We don't deserve this, and our tourist industry, with the closed beaches and the empty hotels, and our environment are not going to survive it. We deserve appointments that will indeed protect the quality of the waters within the region for all beneficial uses, which is the first statement of their responsibilities.

Thank you again for your time and attention.

SENATOR CRAVEN: You're entirely welcome.

MR. PAPARIAN: Mr. Chairman and Members, I'm Mike Paparian. I represent the Sierra Club.

We join Laura Hunter and the Environmental Health

Coalition in opposition to Mr. Foley's appointment.

If we were to pick out one agency of the state with the worst record on environmental enforcement, it would have to be the San Diego Regional Water Quality Control Board. Mr. Foley has been an active and consistent member of that Board for several years. That Board as a whole has done very little to correct problems that have been brought to their attention for years.

In fact, I believe it was in 1987, they got a wake-up call from the Auditor General of the state, who took a look at the Regional Board, took a look at their enforcement actions, and said, "Hey, you've got some real problems here."

They did very little as a result of that. In fact, in 1992, as Ms. Hunter pointed out, the FBI took the rather extreme action of excluding the Regional Water Quality Control Board from discussions of enforcement actions on environmental matters in the San Diego area.

We've seen, as I've said, very little from the Regional Board itself and the Board members to correct this action. As Ms. Hunter mentioned, Mr. Foley isn't alone. The nine members of the Board have been acting together in this manner, and it's a manner which we believe does not represent well the interests of the state, or the interests of the environment, or the interests of the people of San Diego.

So, we would urge the rejection of Mr. Foley for this position.

SENATOR PETRIS: I have a question.

SENATOR CRAVEN: Yes, Senator Petris.

SENATOR PETRIS: What is the role of the FBI? Do they enforce the federal part of the Clean Water --

MR. PAPARIAN: That's right. In a number of areas in the state, there are joint strike forces between federal, state, and local environmental enforcement agencies.

In the case of the FBI, they have a number of responsibilities. If there are environmental crimes that involve across border -- across international border, across state border -- problems, they get involved. They've taken a very active role in environmental enforcement in San Diego.

SENATOR PETRIS: How may of those strike forces are there up and down the state?

MR. PAPARIAN: Quite a few. I'd say at least -- at least six or eight that I'm aware of, and probably more.

SENATOR PETRIS: They're doing this on behalf of the U.S. Attorney, I gather, Department of Justice.

MR. PAPARIAN: Right.

SENATOR PETRIS: They don't go out on their own and do this. They're an investigating arm, I suppose.

MR. PAPARIAN: Right.

SENATOR PETRIS: It's just a little scary to have the FBI remove a state official. When I saw that, I was kind of alarmed. They're doing it to carry out the federal policy, which is combined with the state, local, et cetera, I can see that. It's within their jurisdiction in enforcing the federal part of the environmental laws.

Thank you.

MR. PAPARIAN: Thank you.

SENATOR CRAVEN: Senator Ayala.

SENATOR AYALA: The gentleman says that this is the Regional Board that has the worst record of allowing violations of water control by state and federal agencies.

Is that what you said earlier?

MR. PAPARIAN: If I were to pick out the one entity of the state, the one entity with responsibility in the environmental area that has the worst record, I'd have to pick the San Diego Regional Board.

SENATOR AYALA: You say "the worst." Are they in violation of federal EPA rules, or the State Water Control Board? What do you mean by worst? What are they violating?

MR. PAPARIAN: Well, they aren't dischargers in and of themselves, obviously. They're a regulatory agency.

Our concern is their enforcement of state and federal laws. And in the case of the Regional Board, we think that they have had a very spotty enforcement record, that they haven't shown or demonstrated a commitment to enforcement, that there have been instances where other agencies or, in some cases, citizens through court proceedings, have had to really step in and seek enforcement of the law because this agency has not adequately enforced the law.

SENATOR AYALA: This agency is the worst in enforcing existing law --

MR. PAPARIAN: Right.

SENATOR AYALA: -- as it pertains to water quality.

MR. PAPARIAN: Right.

SENATOR AYALA: Is there anything that you can put at

the foot of Mr. Foley that he is responsible for some of these violations as one member?

MR. PAPARIAN: Well, obviously, you know, any of the companies involved would be the ones responsible for any violations.

The agency which Mr. Foley sits on would responsible for reaction to those violations of law.

SENATOR AYALA: Is he not performing to make sure that these people comply with the law?

MR. PAPARIAN: We believe that Mr. Foley and the other members of the Board have not taken strong enough or, in some cases, any action against many of the violators of water quality laws in the San Diego region.

SENATOR AYALA: What about Mr. Foley being General Manager/Secretary of the Moulton Niguel Water District? Is there a conflict of interest in your opinion of Mr. Foley serving as a member of that Regional Board, yet he manages a water district within that district. Is there a conflict of interest?

MR. PAPARIAN: I am -- I am concerned about that, but in terms of --

SENATOR AYALA: You're not concerned?

MR. PAPARIAN: I am concerned about that.

In terms of raising it as an issue, we have another appointee who, I believe, there's additional questions involving who he represents. It's a different situation than Mr. Foley's situation.

I haven't looked very closely at the types of actions

that the Regional Board might take involving Mr. Foley's employer, and I haven't -- so I just -- I can't give you a full answer in terms of potential conflicts of interest.

SENATOR AYALA: Are there any problems with his employer and the district?

MR. PAPARIAN: I haven't looked specifically at this employer and the district, so I can't answer that.

SENATOR AYALA: Are there other members of any regional board in California who also serve in a water district as managers or secretary, whatever the case may be?

MR. PAPARIAN: I believe there are.

SENATOR AYALA: There are?

MR. PAPARIAN: I believe there are. I can't tell you who.

SENATOR AYALA: So why are you focusing on the gentleman here?

MR. PAPARIAN: The reason I'm focusing on Mr. Foley is not so much because of his employment as his record as a member of the Regional Board.

SENATOR AYALA: His voting record?

MR. PAPARIAN: Yes, his voting record.

SENATOR AYALA: I see, but you see no conflict of interest between his employer and him serving on the Board at all at this point?

MR. PAPARIAN: I wouldn't characterize it quite that way. I am concerned about his working for an entity that is regulated by the Board, but I haven't investigated what sorts of issues might arise where that's a real conflict.

SENATOR AYALA: But except for his voting record, you have nothing that you can tell us about personally in his involvement with his water district versus the Board?

MR. PAPARIAN: No, I haven't looked at that. I'm not sure if Ms. Hunter has or not.

MS. HUNTER: Can I add a couple things?

SENATOR AYALA: Yes.

MS. HUNTER: To the point of conflict of interest -- and you correct me if I'm wrong on this -- but the Moulton Niguel Water District does not have a permit. They are regulated through the Aliso Water Management Agency which does have a permit. And Mr. Foley sits on the Regional Board that regulates that agency. So, it's kind of a one step removed.

I think probably if we were to drag the law of Porter-Cologne out here, that's not a technical conflict of interest; however, I think you can see where a concern raises on our part, since the decisions that the Regional Board makes do affect his agency.

With respect to your other question about, you know, how is the Regional Board in violation. I mean, we believe that they actually are in violation in terms of their charge to uphold the law and protect water quality. And I can give you a couple of examples.

One was the Eastern Municipal Water District permit, which I mentioned. What happened with that was that the discharger, although he admitted -- Eastern admitted they could probably make what's called a one chronic toxicity measurement, which, of course, is the measurement of how many things die from

this stream of water. And that is a requirement of Porter-Cologne and EPA, that a numerical number for chronic toxicity be in a discharge permit. The discharger said they didn't want it in there, and the Regional Board issued a permit without it in there. Therefore, EPA said, "Well, sorry, you can't do that, and we're going to take over your authority for that permit." That was one example.

Another -- I'll just give you one more quick example where the State Water Board resolution says you're not to leave this list of chemicals in groundwater above Title 22 limits, which -- if a groundwater basin is being used for drinking. They issued -- one of those clean-up and abatement orders that they did issue didn't require any clean up and it allowed this PCE to stay in the groundwater basin and they just had to monitor it. But that's not clean-up, and although it was a clean-up and abatement order. We have appealed that to the State Board and that will be heard soon, I think.

SENATOR AYALA: You're saying that his Regional Board is not implementing Porter-Cologne?

MS. HUNTER: Yes, I am saying that.

I can give you other instances. We're having, finally, a hearing next month on the City of San Diego that, you know -- since you asked; you'll regret this, probably -- but here's a letter from the State Board saying that Point Loma has violated their discharge requirements in 28 of the last 60 months. Now that is higher. There have been -- in one month it was up to 651 dry weight tons of sewage sludge discharged over the permit limit. This has been going on. The Regional Board

1 has known about this for over a year, and nothing has been done.
2 Finally we have a hearing set for next month, and we're
3 certainly hopeful that something's going to happen. But this
4 kind of discharge has been ongoing, and nothing has been done to
5 stop it.
6 So, those are some specific examples.
7 SENATOR AYALA: Thank you.
8 CHAIRMAN ROBERTI: Anyone else wishing to testify in
9 opposition?
10 SENATOR CRAVEN: Mr. Chairman, we had two individuals
11 testify following the opening remarks of the nominee, and that's
12 about where we stand.
13 CHAIRMAN ROBERTI: Have we had anyone in support?
14 SENATOR CRAVEN: No.
15 CHAIRMAN ROBERTI: Is there anyone here who wishes
16 to testify in support?
17 Are there any other observations from the Committee?
18 SENATOR AYALA: I wonder if Mr. Foley would like to
19 respond to the accusations.
20 CHAIRMAN ROBERTI: Mr. Foley, please.
21 MR. FOLEY: I would like to respond, if it's
22 appropriate, Mr. Chairman.
23 We do respect very much the opinions of the
24 Environmental Health Coalition, and we invite them to our
25 meetings. And Laura is a very healthy member of that audience
26 that reviews our work.
27 We don't necessarily concur in all our decisions, but
28 I could address very carefully in each of these points.

Let me just say that the problems that she mentions on the beach are primarily attributable to the sewage flows coming from Mexico, which is a real problem, an international problem. We have finally, through our efforts, reached agreement with the International Boundary Water Commission, and the City of San Diego, and the State of California to build a joint treatment plant and outfall to handle that very problem. This is a major accomplishment that the Board's been able to bring about in the last five years.

As far as the Bay is concerned, six years ago the Unified Port District had a budget of $18,000 and one individual that looked at environmental compliance. This year, they have 47 individuals, a budget of over $10 million. There's been a significant effort on the part of the Unified Port District because of the work we've done with them. Voluntary compliance. No hatchet; just voluntary compliance.

She's mentioned a conflict. I do not have any conflict, and I have a legal opinion from the attorney of the State Board that says that my service as a general manager of a water district is not a violation of the regulations.

We do appreciate, and she has brought up points that we struggle with. Again, we don't necessarily agree.

As a Board, we generally have unanimously concluded. The issue of the permit with Eastern Municipal is a classic of trying to reconcile the federal and the state law. We do not agree at the state level. The State Water Board does not agree with the toxicity issue that the federal EPA has come out with. The Eastern Municipal permit was to put live-stream discharge of

1 secondary treated waste into the Santa Margarita River, which
2 eventually furnishes the water supply, drinking water supply,
3 for Camp Pendleton. That's a closed system. They put their
4 waste water into the ground, and the ground does the clean-up
5 that's necessary, and they draw their drinking water out.
6 This live-stream discharge was a benefit to the
7 Marine Corps, a benefit to the downstream users, but we differed
8 on the toxicity issue. We didn't differ with the state; we
9 differed with federal EPA, and there were two nutrient levels
10 that an individual in the federal EPA questioned. We had
11 testimony, a $2 million study by the consultant for Eastern,
12 that convinced the Board that that was not a major issue. And
13 we issued the permit, and EPA took it and said, "We'll take
14 jurisdiction," which is certainly their prerogative.
15 They have now made overtures to the Board to bring it
16 back to us, to go back and work on it again. So, this is not --
17 this is to encourage reclamation, which is one of the objectives
18 we're trying to do in the San Diego Region.
19 That was too lengthy, but I did want to address those
20 points.
21 SENATOR BEVERLY: May I ask a question?
22 CHAIRMAN ROBERTI: Senator Beverly.
23 SENATOR BEVERLY: I'd like you to address the point
24 raised about the FBI letter.
25 MR. FOLEY: Thank you, Senator Beverly.
26 We have worked with the Hazardous Waste Strike Force.
27 We continue to work with them.
28 It was a decision of the Executive Officer that it

was not prudent use of his resources to have a man over there every two weeks all day long to address issues that were not issues of water quality. In some cases they were; in many cases, they were not. So, he removed that man from the participation but not in furnishing of data, or evidence, or cooperation.

I have personally discussed this with Secretary Strock of EPA and said, "If you want the individual back, we'll be glad to do it." We felt it was more prudent to use him on other things and furnish all information the Strike Force needed.

I think it was a lack of communication more than anything else that prompted that letter.

And again, we are continuing to cooperate, and working on a case right now with them.

I also have to point out, sir, that the Strike Force doesn't have, in some respects, the abilities that we have as a Regional Board, to put financial penalties, to bring about compliance without having to go out and use the spear, so to speak. When we have a criminal act, we would certainly refer it to that Task Force. But the majority of the actions we -- that come before us, we can handle, and we have handled them. Many of these are very simple things like failure to report. When they cite 200 violations, it's -- many of those are simple things that we can correct by a letter or a phone call, and we have done that.

I hope that answers your question, sir.

CHAIRMAN ROBERTI: Senator Ayala.

SENATOR AYALA: Mr. Foley, these folks here say that your Board is the worst violator and the worst offender of EPA and federal EPA directives.

Do you concur with that, that you're the worst violator in the state?

MR. FOLEY: No, sir. I would never even seek reappointment if I thought that were the case.

We probably have some of the most difficult issues to address. Our meetings and agenda last approximately eight hours each month. There are a great many issues. So, if you measure the number of issues, we probably have more than many of the other regional boards.

This situation with the discharge, for example, from the outfall serving San Diego, what has occurred there, and it is being addressed at our September Board meeting -- it was brought to our attention just a month ago -- the methodology in which they compute how much residual solids are in the discharge was in error. So, all these reporting periods are now being counted as violations, and they are, but they were -- they were a methodology that's proven to be incorrect and was not accurate in the reporting.

SENATOR AYALA: Whose --

MR. FOLEY: The City of San Diego that operates the Point Loma plant.

Again, I'm trying to put in context what was stated. Yes, there was a violation. Yes, it occurred. We intend to correct that, and it was a methodology.

SENATOR AYALA: I'm not sure you said, but I think

you mentioned earlier that you don't always agree with EPA. What's that got to do with anything? That's the law. You don't have to agree; you just have to enforce it.

MR. FOLEY: Well, the specific that I was referring to there was the nutrient level, for example, for phosphate. On the discharge from the Eastern plant, and over the mileage that would be covered in that discharge before it reached the underground basin, there was very compelling evidence by the engineering firm that that discharge and the mixing in the stream would precipitate that phosphate issue out.

EPA took the position that, no, at the end of the pipe if that's the discharge, that's the way it would be.

It was a judgment call there, and we, as a Board, felt that the evidence was stronger that it would not be a problem.

I might mention, the Marine Corps, the Fallbrook Sanitary District, and Eastern Municipal -- the three parties -- had agreed that this was best for them all.

CHAIRMAN ROBERTI: Any other discussion or debate?

If maybe the two groups in opposition could come back and respond one more time to Mr. Foley's answers, I'd be interested.

MS. HUNTER: I'll just make a couple of points.

Mr. Foley mentioned voluntary compliance. And I wish I'd have brought it with me, but in the 1987 Auditor General's report, it had a specific statement in the summary saying the Regional Board needs to take more aggressive enforcement action because the voluntary compliance that they have been seeking is

not working. And I will make sure that all of you get that because that is exactly --

CHAIRMAN ROBERTI: Are they authorized to go beyond voluntary compliance?

MS. HUNTER: The Regional Board?

CHAIRMAN ROBERTI: Yes.

MS. HUNTER: Yes. They are authorized to levy fines.

CHAIRMAN ROBERTI: What year was this report?

MS. HUNTER: It was in 1987.

In my testimony -- I think you weren't here -- I cited that nothing has changed. We did an assessment of the 19 MPDS permit holders around San Diego Bay found that there had been 222 violations and two fines levied. And that was a period of five years. So, that's one percent enforcement.

CHAIRMAN ROBERTI: How is that comparable to other regional boards?

MS. HUNTER: I don't know, because we only have experience with our Regional Board.

But I can tell you that I'm here -- this is a very unusual step for us to take. We try to -- as we've said, we've been to the meetings; we try to work with the Board members. And we are at the point where we don't know what else to do.

I mean, there are very seriously wrong decisions being made that are not protecting the environment, and we just don't know what else to do.

All the beach closures are not in Tijuana. What about the Peñasquitos Lagoon, which is a recipient of a sewage break from our sewage system? That's miles and miles north.

Right now the kelp bed is closed because of bacterial pollution. That's not coming from Tijuana.

So, the beach closure is not just the Mexican border issue. That's certainly a problem, but that's not the only problem that we have.

And again I'll state that we had almost half of the beach closures for the entire state in 1991.

CHAIRMAN ROBERTI: In San Diego County?

MS. HUNTER: In San Diego County, yes.

The other point I want to just touch on is discussion -- to say that because of the Board's strong action, that the Port District has upped their environmental department.

I think one good action that the Board did take is, they named the Port District to a permit, so the Port went out and, you know, got an attorney. And now an attorney, instead of a biologist or a scientist, leads the Port District's environmental program. And that's resulted in one case -- Mr. Foley wasn't there for this vote -- where the clean-up level, because of the advocacy of the two attorneys -- one from the Port and Mr. Loramie from Peco -- they raised the clean-up level from 1,000 parts per million to 4,000 parts per million. We had to appeal that decision to get it knocked back down to 1,000 parts per million. And that was an unanimous endorsement by the State Board that we were right, and that clean-up level should not have been raised.

So, I think it's good the Port's spending more money, but they're spending a lot more money on litigation to get out of the clean-up that they need to do. And I think

1 that's just a little bit off.

2 The last point about the Eastern permit, I want to
3 focus on the idea of a chronic toxicity standard that was
4 supposed to be in the permit. I sat in the hearing when Eastern
5 admitted that they probably would not have a problem meeting
6 that standard. And the standard was one PUC per chronic
7 toxicity. That was the measurement, and they admitted they
8 probably wouldn't even have a problem meeting that standard, but
9 they just didn't want it in there.

10 So, the Regional Board went back and forth, and back
11 and forth. Staff has estimated a thousand hours of staff time
12 was spent on that. And then it ended up with EPA having to come
13 down and take that permit away.

14 One of the reasons the meetings are so long, and
15 there are so many issues, is because swift and direct targeted
16 enforcement action is not taken. And these folks get their
17 attorneys in there, and they haggle on and on, and this is where
18 we end up, with a thousand hours on Eastern's permit. It was
19 not legal. It was not right. It was not by the laws that you
20 made, and then there we are. And that took a lot of time to do
21 that.

22 So, that's our perspective on what happened at
23 Eastern.

24 CHAIRMAN ROBERTI: Thank you very much.

25 Senator Petris has a question.

26 SENATOR PETRIS: We have some extracts from the
27 Auditor General's report that you referred to. I wanted to ask
28 you if there's been any substantial improvement in certain areas

cited by the report.

For example, the report was issued in '87, so it says that:

> "As of December 31 [of the previous year], the regional board had not reviewed or revised within the previous five years the requirements ... for 37 [out] of 54 dischargers."

Also:

> "Thirty-three of 80 dischargers did not submit all their required reports during ...."

the prior two years. In addition:

> "... the regional board did not perform 25 of the 160 inspections that it was required to perform ...."

There seems to be a shortfall all around here in the inspections done, or not done but should have been done, reports filed that should have been filed were not filed, and so forth.

Has your group done any follow-up since the Auditor General's report to see if there's been improvement in these areas?

MS. HUNTER: What we did in response to that was this 1991 review of the 19 MPDS permit holders around the Bay. At that point, we found 222 violations. And as Mr. Foley says, many of those are, they just didn't file their reports.

So, the question is, has there -- so, no, there had not been improvement as of 1991.

SENATOR PETRIS: What is the penalty for not filing a report?

MS. HUNTER: I think the maximum is like $1,000 a day.

SENATOR PETRIS: Can they revoke their permit?

MS. HUNTER: Well, they're the Regional Board. They can do what they want. I mean, they can take very stiff action to get these people into compliance.

SENATOR PETRIS: Have they ever done that? Have they ever revoked --

MS. HUNTER: Revoked a permit, not to my knowledge. I don't think so.

SENATOR PETRIS: I remember Senator Hart did a survey because he was concerned about lax enforcement in a number of areas. He found a very, very low ratio of actions resulting in fines compared to the number of violations. And he also found that the fines were very, very tiny compared to what the authorization was in the statute.

MS. HUNTER: Yes.

SENATOR PETRIS: Now, that came out, what, three years ago; didn't it?

MS. HUNTER: I don't know.

SENATOR PETRIS: I wonder if there have been any improvements since then?

MS. HUNTER: I can't speak to that. I think --

SENATOR PETRIS: Maybe Mr. Foley can.

MR. FOLEY: I'd be glad to address it, Senator.

One of our methods of bringing compliance is to take

what could be the fine, the extent of it, and turn that into a corrective action that we demand from the discharger. So, your records would not show that action as a fine, but in many cases, it's the expense of the fine. And that's been the case in many of ours.

We are very hesitant to just fine for the sake of fining if we have a way and a mechanism of making that money go into a clean-up. So, as a matter of course, that's what we've done. So, the record doesn't reflect that as a cornerstone of our policy.

SENATOR PETRIS: Would it reflect the number of clean-ups?

MR. FOLEY: That's right.

In other words, many of these -- Laura's correct. There are these violations. But you also have to put on the other side of the ledger the corrective actions that have been taken.

For example, in my opening remarks, I alluded to the fact that there were 224 violations that we addressed during my tenure. And of those, 29 resulted in fines; 116 were clean-up and abatement orders that directed the clean-up and were policed to be sure that it was accomplished; and 48 of them were cease and desist orders, which just says, "You stop doing that." And the final group was a time schedule order which gives them a particular time schedule to implement a restoration or clean-up.

So, the number of violations has to be matched against the performance that has occurred. In the case where you asked if somebody failed to report, the general procedure

there is to notify them of their failure to report, and they immediately comply in most cases. It's normally an administrative error.

We haven't, as a matter of course -- we have in many fined them $200. That's been the Executive Officer's jurisdiction. It doesn't even come to the Board level.

CHAIRMAN ROBERTI: You're saying you may not have taken the course of fining violators, but you use the methodology of clean-up and abatement, and cease and desist?

MR. FOLEY: That's correct, sir.

SENATOR PETRIS: The problem I have with that is, you have a company that's just not doing what it's supposed to do. And I'm sure there must be a warning letter, there must be some conferences, there must be some product, and they still don't do what they're supposed to do. Finally it comes to a head, and you're either going to fine them or do something else. Now, the something else is to go back and tell them to do what they should have done, you know, in the first place.

That seems to me to be an invitation, if I owned a company, to stretch out my lack of activity as long as I can, because all they're going to do is say, "Well, go back and do it."

It's nice to have corrective action, but it doesn't really encourage me, as a company operating in that area, to obey the law. Well, the worst that can happen is that we'll put out this money that we should have put out sometime back, correct the problem. It might be worse today than it was two years ago.

Maybe that's why there's so many that fail to file reports. They figure, what the heck; we can ride this train for a long time before they really get tough on us.

And I can agree that just fining is not as good as correcting, but I would impose that correction a lot earlier in the day than seems to be the case in these reports, you know.

MR. FOLEY: I totally agree, Senator.

I'd like to distinguish between the private firm that may be following the scenario you're mentioning. I think we would sense that pretty quickly if that attitude is there of stretching, and we do look for that.

In many cases, we're dealing with municipalities. One of our concerns there is, a fine on the municipality is merely hurting the taxpayer and the rate payer to make them pay for the lack of performance on the part of the leadership in that municipality. So, we look very hard at that.

We, again, would rather that money, as you can see, go into the correction. And we do direct and we have directed those clean-ups.

So, I totally understand what you're saying. And we have to be conscious and cognizant of that fact.

SENATOR PETRIS: Well, my limited knowledge of San Diego tells me, number one, it's one of the most beautiful areas we have. Number two, there's a high level of consciousness of that fact among the people who live there, and they're proud of those resources, and they'd like to have them protected. Some of the work that's been done generally in the San Diego area to protect Mission Bay and San Diego Bay, and others, has been

very, very good, and the public supports it very strongly.

It seems to me if they read one day that the City, the bureaucrats aren't very popular anyway, if they woke up one day and read in the local newspaper that the City had permitted these tons of sludge to keep on pouring in there without doing anything about, and finally the Board socked them with a big fine, they'd get a double whammy. They'd be angry about the bad practice, and they'd be angry about the cost, which eventually reaches the individual taxpayer, of the fine and/or the clean-up.

So, I wouldn't distinguish between the private and the public. I think sometimes you ought to hit the public agency harder than the private to be an example and show the way. And say, you know, we'll start with these public agencies and hope the private sector will follow. We do it in other areas. They're supposed to be a model of following the law and doing the right thing.

MR. FOLEY: I might comment, Senator, and you're correct. The City of San Diego, we forced them into a $2 billion program now of clean-up. This is known as the Clean Water Program. This is because of the actions we've taken. They built a whole new pump station, a giant pump station, after they had repeated spills and violations that Laura's mentioned. We forced that issue and fined them significantly. I don't recall the number, but it's in the hundreds of thousands.

So, we have done it when we feel that they're not being responsive.

And I can assure you, this sludge issue is something

coming before the Board on September 17th, and I think there's gong to be some pretty serious action.

MS. HUNTER: Senator Petris, if I could just add to that.

I was going to mention, I think the City of San Diego is of major concern, because I think that many of the Board members, because they work with and for and around, and our City Council people that are part of -- that use the Point Loma outfall, or managed like districts, have a very great sensitivity about that. Unfortunately, there's people on both ends of those pipes.

And why are we protecting the City of San Diego's really chronic mismanagement of that sewer system that's impacting the tourist industry, the diving industry, the swimmers, the surfers? You can't talk to a surfer in San Diego that hasn't been sick or had rashes.

And if we talk about Pump Station 64, I mean, yes, the Regional Board levied a fine, and they held -- at one of the spills at the Pump Station 64, they said, "We're going to hold most of it in abeyance unless this happens again." Well, very soon after that another 20 million gallons of raw sewage poured into one of our lagoons, and the Regional Board, what I read in the record, joined the City in trying to stop that ACO from going through at the State Board.

So, the fine was levied, but it was held in abeyance, and I don't know that they ever did pay that. In the testimony, the attorney for the City was saying, "Well, this is a once in a -- you know, a one-time deal." Then it happens

again, "Oh, it's another one-time deal." Then the outfall breaks. Well, guess what that was? It was another one-time deal. Meanwhile, we're stuck with these problems.

So, I would agree with you that the City needs to be sent a message, as a lot of these dischargers do, because those dischargers that don't comply, don't pay the money to get the reports in on time, have a disadvantage against those dischargers who are putting the resources into enforcement; they are getting the reports in on time. And that's not fair. We want to encourage those that are in compliance, not avoid those that are in noncompliance. And that is what's happening there.

MR. FOLEY: I might mention that we are plaintiffs with the federal Environmental Protection Agency. We've taken the City to court for failure to meed secondary discharge requirements. And that lawsuit is being administered by the Justice Department at the present time. The City is being made to stand tall.

CHAIRMAN ROBERTI: Senator Ayala.

SENATOR AYALA: I'm reading from the analysis in response to a 1984 report by the Auditor General's Office:

> "... the state board and the nine regional boards have established a regulatory program that establishes the specific workload that the regional boards are to meet. In implementing the regulatory program, the San Diego Regional Board should review and, if necessary, revise each of the requirements for dischargers

once every five years. The regional board should also review each discharger's reports, inspect each discharger's operation from one to three times a year, and take prompt ... action against those dischargers that violate water quality standards.

"However, as of December 31, 1986, the regional board had not reviewed or revised within the last five years the requirements for 37 of 54 dischargers. Also, 33 of 80 dischargers did not submit all of their required reports during the calendar years 1985 and 1986."

And you were Vice Chair of the committee at the time.

"In addition, the regional board did not perform 25 of the 160 inspections that it was required to perform of those dischargers that pose the highest threat to water quality."

And it goes on and on. It's not very encouraging for that Board's actions.

Can you respond to that?

MR. FOLEY: Yes, Senator.

That, again, was prior to my time, but I know we have taken correction action --

SENATOR AYALA: Prior to what, sir?

MR. FOLEY: Prior to the time I was on the Board.

SENATOR AYALA: It says you were Vice Chair at the time.

MR. FOLEY: Maybe when the report was rendered, but the actions they're talking about are prior to that.

SENATOR AYALA: In '87, it reported that you were the Vice Chair of the Board.

MR. FOLEY: You were talking about '83.

SENATOR AYALA: But this overlaps into '84.

MR. FOLEY: I walked in, and the report was handed --

SENATOR AYALA: You walked into that.

MR. FOLEY: I walked into it. And I can assure you, those follow-ups -- that we automated the system; put it on computer so they could track it quite carefully. And those inspections, to the best of my knowledge, are being made today, and that has been corrected.

MS. HUNTER: One of our concerns over the past couple of years is that resources have been tight, and in at least two of those years, about halfway through the year, the Board's staff members were taken off enforcement completely and put into permit writing. And that is -- we protested that. If there's no enforcement, what is the motivation to follow your permit? And that has been another area of concern, that permitting has been frequently given a higher priority than enforcement.

I guess that's a judgment call, but it's one that we vehemently disagree with.

SENATOR AYALA: In all fairness to the gentleman and the Board, it says that the Secretary of the Environmental Affairs Agency and Chairman of the State Water Resources Control

Board agree that the San Diego Regional Water Quality Control Board has improved its regulatory program, but they still have need for further improvement. I guess they're on the right track, I guess, trying to improve their enforcement of these regulatory areas.

CHAIRMAN ROBERTI: Thank you, Senator.

Thank you very much.

Mr. Paparian.

MR. PAPARIAN: The only item I wanted to add related to the FBI and the Enforcement Strike Force.

Mr. Foley indicated that if Cal-EPA was -- had a desire for them to reinstitute their biweekly attendance at the Strike Force, then they would be willing to do so.

On the back of the letter we gave you from the FBI is a response dated July 30th from Cal-EPA, wherein it says, and this is from Cal-EPA:

> "As I indicated, this development is quite disconcerting, especially in light of the fact that Cal-EPA has expressed a desire that enforcement personnel from the Agency's constituent boards and departments actively participate in strike/task forces designed to coordinate state, local, and federal enforcement efforts.
>
> "I hope we can resolve this matter quickly, and again have your region participate actively and constructively on

the strike force."

That was July 30th, 1992.

So, I think that the views of certainly the state entities involved here have been made quite clear, that again the San Diego Regional Water Quality Control Board has really done nothing to reinstitute itself into the Strike Force.

CHAIRMAN ROBERTI: Thank you very much.

I'm speaking only for myself, Mr. Foley. I tend to think that the enforcement has been a little bit on the lax side.

Your qualifications are very good for this Board, but I'm a little nervous that this District seems to have been weaker in enforcement.

I'm speaking, as I said, only for myself. Personally, I would like to see you get confirmed, but I just don't think the record warrants a vote from me. It's just a little bit too weak.

I want you to know why I'm going to be voting the way I'm going to be voting. I don't know how the others are going to be voting.

Do I hear a motion?

SENATOR CRAVEN: I'll move.

CHAIRMAN ROBERTI: Senator Craven moves confirmation.

Secretary will call the roll.

SECRETARY WEBB: Senator Ayala.

SENATOR AYALA: Aye.

SECRETARY WEBB: Ayala Aye. Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Beverly Aye. Senator Petris.

SENATOR PETRIS: No.

SECRETARY WEBB: Petris No. Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Craven Aye. Senator Roberti.

CHAIRMAN ROBERTI: No.

The vote is three to two; confirmation is recommended to the Floor.

MR. FOLEY: Thank you, sir.

CHAIRMAN ROBERTI: Mr. John J. Lormon, Member of the California Regional Water Quality Control Board.

Let me suggest we break for five minutes.

[Thereupon the Rules Committee took a brief recess.]

CHAIRMAN ROBERTI: The Committee will come to order.

The next appointment is that of John J. Lormon, Member of the California Regional Water Quality Control Board, San Diego Region.

Mr. Lormon, please come forward. We will ask you what we ask all the Governor's appointees, and that is why you feel you're qualified to maintain this position?

MR. LORMON: Thank you, Senator. I appreciate the opportunity to be here.

I believe that the qualifications come from a couple of different sources. One are on a personal level. I've very much been active in environmental issues and enjoy the outdoors. And having lived near the water most of my life, and lived in Alaska for a while, I've had occasion to partake of those

natural resources, and I appreciate them.

On a more vocational level, the work that I do involves environmental compliance, legal counseling to individuals and business entities. And in that regard, I'm involved in trying to advise companies not only on complying with the laws, but having programs that include environmental excellence and enhance the environmental component of their business operation. It's a view that I hold that it's wise not only for the environment, but it just makes good business sense to have strong environmental programs.

So, from that experience, I've had an opportunity to work with the water laws, and to come to a pretty good understanding of what they are, what they require, and have a great and deep respect for them.

Essentially from those two sources, I think I have some qualifications to continue to serve with this Board at this Committee's pleasure.

CHAIRMAN ROBERTI: There have been some questions that have been raised regarding a possible conflict of interest.

You're an attorney. Do your clients include any persons or entities that are subject to regulation by the State Board or by the Regional Board? If so, how do you conduct yourself?

MR. LORMON: The answer is yes, there are clients that are subject to those jurisdictions.

The way I conduct myself has been, it's been a learning process. I've only been on the Board since February 1 of this year, so I've had six meetings that I've participated

in.

And as I've worked my way through that, I abstained from participating in an action where there has been a client involved. In some instances, that is in the early days, including informational items I didn't realize I didn't need to avoid participating in, and many consent items.

So, the result has been that I have avoided participating in some matters.

CHAIRMAN ROBERTI: Right now, I guess, under federal and state law, it's defined as a significant portion of your income would be 10% or more of gross personal income for a calendar year, except that it means more than 50 or more if the recipient is over 60 years of age, in which case, I guess, you would have to recuse yourself from participation.

Is that the case with you as far as people who are permittees or applicants?

MR. LORMON: Yes, it is the case, both the federal and state law require that.

And at the time that the appointment was under consideration, and since that time in preparation for this meeting, I had occasion to review that issue in detail. What I did is, I compared the firm's gross income with the income from all the permit holders or applicants for permits, and made a determination as to whether or not I was qualified or disqualified under that law. And I fell below the standard of 10%.

CHAIRMAN ROBERTI: I want to stress, I do not have anything in the file where there's any accusation against you,

that you have violated any conflict of interest statute, but I thought it was important for the record to have that up front.

I may think that the standard is lenient, but whether that's the case or not, the issue in regards to you, I think it's important to say, to my knowledge hasn't been violated.

Senator Petris.

SENATOR PETRIS: When you recuse yourself in a particular application, do you rely on someone in particular to guide you, or as a lawyer do you make your own judgment?

MR. LORMON: Well, I relied on a variety of sources in the general sense, Senator.

First I had meetings with the State Water Board's Assistant General Counsel, and the Regional Counsel assigned to our District. We reviewed a variety of documents to make a determination on qualification and the rules as to recusal in each instance.

Furthermore, we have within our law firm an attorney that's sort of our Father Confessor that deals with our ethics issue, and we're very strict in that regard, and we take that very seriously. I have conferred with him, and then I make my own determination as to each matter.

SENATOR PETRIS: Well, I see a real quandary here. On the one hand, there is this strong possibility of conflict hanging over your head. On the other hand, you're very conscientious about it. According to the information I have, you have not participated 14 times because of that over a certain period of time. And some counsel, I don't remember who, concluded that you really only had to do it four times.

1 So it looks to me like you're leaning over backward
2 to make sure you don't get yourself into a conflict mode, but
3 the more you refrain, the more the agency is weakened by not
4 having all of its members participating. Do you know what I
5 mean?
6 The cleaner you are, and the more you stay out of
7 decisions, the more it weakens the intent of the statute, which
8 is to have X number of persons working on this on every
9 decision.
10 So, that presents a real quandary to me. You've got
11 yourself in a bind there which, to your great credit, is
12 motivated by a very, very strong desire not to be involved in
13 any conflict.
14 Do you see what I'm saying? Maybe you're, by
15 definition, in such a situation because of your practice that
16 you're just going to continue to have conflicts as long as
17 you're on the Board.
18 MR. LORMON: Would it be helpful if I compared that
19 to the total number of agenda items?
20 SENATOR PETRIS: Yes, it's 85 in that time period;
21 isn't it?
22 MR. LORMON: No, there have been 185 which, on --
23 during these first six meetings, I've been trying to apply the
24 facts to the very complicated regulations, and I took a very
25 conservative approach. And as I've worked my way, received
26 additional guidance from the State Board's Counsel, that number
27 of -- actually, it's 15 that I count, not 14. Of that number,
28 which is about 8%, if -- the actual number that I would have had

to miss was more in the 2-3% range.

I mean, if somebody's out with -- you know, over the life of that number of meetings, if you missed one meeting, you'd miss a lot more than that.

And so, I think in the future, as I better understand the rules, that the frequency will be more in the 2-3% range based on experience than in the 8% range.

SENATOR PETRIS: On the other issue, you heard the comments regarding the overall record of the Board, and the fact that nearly all the decisions are unanimous. So, anybody on the Board shares the blame for a lack of action, if there is any.

Can you respond to some of the points that were raised earlier regarding the Auditor General's report? That was way before you went on; I realize that. And the exclusion from the federal task force for failing to participate, and so forth, some of these other items. Do you have any comment on those?

MR. LORMON: Well, they all were before my -- my participation on the Board.

I could add that since I've been on the Board, there haven't been that many clean-up and abatement activities, but in one instance I pushed for an increase in the fine that was recommended by staff. And that was ultimately adopted by the Board, because I felt it was appropriate.

SENATOR PETRIS: Which one was that?

MR. LORMON: It was Ramona Water District.

SENATOR PETRIS: How about the City?

MR. LORMON: I haven't participated in any City enforcement matters, so I don't have any --

SENATOR PETRIS: There haven't been any since January, when you got on?

MR. LORMON: Not that I can recall, Senator.

CHAIRMAN ROBERTI: Any other questions? Senator Ayala.

SENATOR AYALA: Mr. Lormon, I'm not quite clear whether your answers to Senator Roberti and Senator Petris indicated that you were no longer associated with a client that might come under the regulations of the State or Regional Boards.

Do you still have clients that you represent that could be subject to these regulations?

MR. LORMON: Yes, I do.

SENATOR AYALA: And do you intend to retain those clients while you're serving the Board as well?

MR. LORMON: I don't have many clients that are subject to Board regulation, and where they are in front of the Board, I wouldn't participate in those matters.

I have taken a broader view than I was required to in my recusal activity in regards to matters that came before the Board. And there are some instances where I could have participated, and I will in the future.

SENATOR AYALA: So, you do represent clients that might prohibit you from participating during one of the Board meetings on a given subject matter because they could be involved with a conflict of interest with you?

MR. LORMON: Yes.

SENATOR CRAVEN: Ruben, are you referring to the

conflict, basically?

SENATOR AYALA: Yes.

SENATOR CRAVEN: Well, you know, I just read this thing here. I don't think we have to concern ourselves too much about the investment, or $1,000; that's not his end of it.

His would be what he would gain in return from employment, his employment.

He's with San Diego's biggest law firm, I think. He is one of about probably 150 attorneys. That's a big law firm.

And, you know, you have to break it down rather miniscule to think how much he's going to profit, you know. Maybe get a roll of stamps, or something. It's almost ridiculous.

What he's doing, he's gone out of his way to try to stay on the upper high side, which is fine. As Nick said, that's to his credit.

CHAIRMAN ROBERTI: And credit to him, he's gone out of his way, and it's probably made it look like a bigger issue than it is.

SENATOR CRAVEN: That's the point that I was getting to.

MR. LORMON: That's the irony, Senator.

CHAIRMAN ROBERTI: I sort of sympathize with you. We'll get to your votes later, but I sort of sympathize with the conflict of interest problem because we all experience those kinds of things when we have to make our decisions here. It's very, very difficult.

Actually, I commend you for bending over backwards.

But in doing so, you just made the issue bigger.

Senator Ayala.

MR. LORMON: I used the "one cent standard" when I could have used -- if there was one penny to the firm, I didn't participate. And under the rules for a particular matter, it could be $250, and so I've taken a very broad view.

SENATOR AYALA: You're trying very hard to avoid a conflicting case.

MR. LORMON: Yes.

CHAIRMAN ROBERTI: Is there anyone here in opposition?

SENATOR CRAVEN: Again?

CHAIRMAN ROBERTI: Ms. Hunter.

MS. HUNTER: What I want to start with, we did not oppose Mr. Piersall, who was also a nominee, so I don't want you to think this is a blanket attack.

Again for the record, my name is Laura Hunter. I'm Director of the Clean Bay Campaign and Environmental Health Coalition.

Although this is Mr. Lormon's first appointment to the Board, we have some real concerns related to some of the issues you've been talking about, and some of the folks that -- the reason we have polluted water, and a Bay clean-up, and Bay toxics protection is because his clients have been out there not taking care of business very well.

I want to clarify one thing right away. I don't know where Mr. Lormon gets the 185 issues number. I have the agendas right here, and I added them up. And the only way you can get

anywhere near 180 issues is if you count "Call to Order" as an issue, "Adjournment" as an issue.

CHAIRMAN ROBERTI: Count what as an issue?

MS. HUNTER: "Call to Order" as an issue, and "Adjournment" as an issue, and "Public Forum" as an issue. And that was the only way.

And also, from these agendas that he's been on since February, 30 of these items have been pulled and never appeared before the Board. So, I think it's misleading to say that there have been 185 issues before the Board. We've been at those meetings, and there haven't been 185 issues.

There have been 87 actions, with 11 executive sessions. I don't know if Mr. Lormon recuses himself from the Peco Terminal's and the Port District's executive sessions, because we don't have access to that kind of information. So, I think it's misleading to say there've been 185 issues, and I just wanted to clarify that.

Mr. Lormon -- there's lots of attorneys, as you can imagine, in San Diego, but Mr. Lormon is one of, if not the leading, environmental defense attorney, I guess you'd have to call him. He's had many clients that do have permits, that have appeared before the Board, that will appear before the Board.

And I think we're not talking little R.V. camp grounds here and there that have some little septic tank that has a permit. We're talking major clean-up orders in San Diego Bay. The three that are underway right now are: Teledyne Ryan, Convair Lagoon, and Commericial Basin as Driscoll Boat Yards as part of the clean-up team. All three of those, I think, have

caused Mr. Lormon to properly recuse himself, and we appreciate the fact that has done that, but those will be coming up many more times in the future. And those are very important to us.

If we want a viable, ecologically sound Bay, we need to move ahead with these, and he's not going to be there. And we're not going to have the representation.

The other conflict that's of major --

SENATOR CRAVEN: May I interrupt you?

MS. HUNTER: Sure.

SENATOR CRAVEN: At the time that he is not going to be there, which you regret, as I understand your remarks, is that a public hearing?

MS. HUNTER: Yes.

SENATOR CRAVEN: You will be there?

MS. HUNTER: Yes.

SENATOR CRAVEN: Then, I feel very, very comfortable.

MS. HUNTER: I can't vote, though. Maybe if I could have his vote --

SENATOR CRAVEN: I know, but you've got to be an influencing factor.

MS. HUNTER: The other issue that is of concern to us is this whole relationship with the Strike Force. If you remember, the Strike Force goes after the chronic criminal violator. I think we all agree, those are the folks that we want to come into compliance.

Mr. Lormon or his firm, according to my discussions with the Strike Team members, have represented Western Salt, Sorrento Ready Mix, Stanley Steamer, General Dynamics, either

Dyabil or Genardi -- they were, I guess, tried together; they weren't sure which company that was. And currently two cases --

SENATOR PETRIS: Is Stanley Steamer still around?

MS. HUNTER: They're still around.

SENATOR PETRIS: Not the automobile.

MS. HUNTER: Oh, no. It's a carpet cleaning company.

SENATOR CRAVEN: It's spelled a little differently.

MS. HUNTER: The Regional Board already has a black eye in this area, and we're very concerned what happens when, hopefully, this will work out; the Regional Board will get back in the Strike Force. And now we have a member of the Regional Board who has represented and defended many of these -- these defendants, I guess is what you call them.

I guess technically, it's not a conflict of interest. Ethically and in common sense tell you that this is not good policy.

Mr. Lormon fulfills the undesignated public slot on the Board. I know it's the Governor's discretion, but again, I think he represents a segment of the public and maybe not all of the public. That would be the indication to us that we're worried about.

In February, Bill Carter from Cal-EPA came down to address the Regional Board about his concern that they had been removed from the Strike Force and not been replaced. Mr. Lormon raised some issues with him that he felt that the cases that were gone after -- and you can correct me if I'm wrong; I listened to the tape a few days ago -- were not good cases; were not the best cases. And while you supported the Strike Force,

you felt that the cases so far did not represent the best cases that could be brought.

Well, there have been a lot of cases brought, and I think our Strike Force is doing an excellent job bringing those cases. And I guess I would disagree with that.

So, anyway, thank you.

CHAIRMAN ROBERTI: Mr. Paparian.

MR. PAPARIAN: Mike Paparian representing the Sierra Club.

As I understand the legal field, there's a number of firms that specialize in issues, or sometimes several issues. If you're in a certain area of the state, you might specialize in defending publishers of newspapers, or auto insurance companies, or school boards, or whatever.

If You're in San Diego, and you are a discharger of substances into water supplies, and you need outside counsel, there's a very good chance you're going to wind up at Mr. Lormon's law firm. Not only are you going to wind up at Mr. Lormon's law firm, you're going to wind up in the unit being represented by, if not Mr. Lormon, somebody within Mr. Lormon's unit, the unit that he heads up at his law firm.

I don't question Mr. Lormon being a fine individual. I wouldn't mind him being my next-door neighbor.

But I question whether someone who does in fact represent a number of clients who are dischargers of substances to the water supplies, sitting on the regulatory body that regulates discharges of substances into water supplies.

Now, I don't question that his firm of however many

attorneys -- Mr. Craven thought it was over a hundred.

SENATOR CRAVEN: I said 150, I think, Mike. I think that's about what it is.

MR. PAPARIAN: Yes -- receives less than 10% of the firm's income from people who have business before the Regional or State Water Board.

I don't know, and we don't have access to -- given the nature of some of the filings, how many of the -- how much of the firm's income that is generated as a result directly of Mr. Lormon's work actually comes from people who have business before the State or Regional Board. That would concern me if more than 10% of the income that he actually generates, or the 10% of his billable hours, actually come from clients who have or may have in the future business before the Regional or State Water Board.

I'm not making an accusation. It's just something that I do not know based on the information we've been able to see form the public records.

In any event, even if that amount is less than 10%, I do question someone serving in the public position on a regional water board being someone who generates a portion of his business representing clients who discharge into water supplies.

CHAIRMAN ROBERTI: Thank you, Mr. Paparian.

SENATOR CRAVEN: Mike, I understand your philosophy. I think your point's well taken.

But don't you think it's entirely possible that he loses money by virtue of being on that Board? He can't

1 represent all of these people who are just longing to hire him
2 to represent them by virtue of a conflict of interest. So, he
3 recuses himself.
4 So, you know, I don't see where he's making money by
5 virtue of that. I think he's losing money by virtue. He's
6 making a big $100 a month on that, or per diem. Yes, per diem;
7 that's the way to say that. That's a lot of money.
8 I don't imagine there're many attorneys in that firm
9 who work for $100 an hour, but there may be some. They probably
10 work the Xerox machine.
11 CHAIRMAN ROBERTI: The objections to Mr. Lormon do
12 not appear to go to his voting record. They appear to go to the
13 serious question of conflict. But it just doesn't strike me
14 that Mr. Lormon has made himself conflict bait. I mean, he
15 appears to have gone in the other direction.
16 If we're talking about philosophical perspective,
17 taking somebody from a firm that is discharge defense oriented,
18 well, maybe I don't like that. If I were a Governor, I probably
19 wouldn't make that appointment myself, but I'm tending to think
20 that that is the range that the Governor's entitled to.
21 In reviewing Mr. Lormon's resume here and listening
22 to him, I just think he's bent over backwards to avoid doing
23 anything that even would appear to be in error.
24 Now the question is one of philosophy, maybe, and
25 then the other question is of votes, but I haven't heard
26 anything yet --
27 SENATOR CRAVEN: Well, you know, there's one way to
28 settle this, Mr. Chairman. One way to settle this, as far as

I'm concerned, is go out and find yourself a bunch of amateurs; real AAU people who don't know pork from cheesecake, and put them on there and let them make these technical decisions. And they don't have any conflict of interest because nobody's ever going to hire them. That's for sure, because they don't know anything about it.

Let's not diminish the fact that people have an expertise and can exert it, and some of those people are even so altruistic they recuse themselves so there is no coloration of conflict at all.

I think that has to be taken into consideration. I think that should be an applauded thing, not something to be criticized. Something to be encouraged.

CHAIRMAN ROBERTI: I think you've make your point, Senator.

Any other questions?

Is there anyone else in the audience either in support or opposition?

Do I hear a motion?

SENATOR CRAVEN: Move.

CHAIRMAN ROBERTI: Senator Craven moves.

Secretary will call the roll.

SECRETARY WEBB: Senator Ayala.

SENATOR AYALA: Aye.

SECRETARY WEBB: Ayala Aye. Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Beverly Aye. Senator Petris. Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Craven Aye. Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is four to zero; confirmation is recommended to --

SENATOR PETRIS: Petris Aye.

CHAIRMAN ROBERTI: The vote is five to zero; confirmation is recommended to the Floor.

MR. LORMON: Thank you very much.

CHAIRMAN ROBERTI: Congratulations.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 3:51 P.M.]

--oo0oo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of August, 1993.

Evelyn J. Mizak

EVELYN J. MIZAK
Shorthand Reporter

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2:42 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chair

SENATOR WILLIAM CRAVEN, Vice Chair

SENATOR RUBEN AYALA

SENATOR ROBERT BEVERLY

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

RUSSELL S. GOULD, Director
Department of Finance

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CHAIRMAN ROBERTI: Next is the confirmation of Mr. Russell Gould, Director of Finance.

We will ask you -- you've been through this before.

MR. GOULD: Yes, sir.

CHAIRMAN ROBERTI: We'll ask you what we asked you in the past: why you feel you're qualified to assume this position?

MR. GOULD: I appreciate the opportunity to be here, Mr. Chairman and Members. It's a pleasure to be with you again, actually.

It was just a little over a year ago that I was confirmed to the Secretary for the Health and Welfare Agency, and I believe it's that experience, of running the Health and Welfare Agency, in conjunction with my previous financial experience, that really provides for the balanced perspective necessary to be Director of Finance.

In terms of my education background and early years, I'm a native Californian. I came through the public school system, the community college system, and ultimately through the University of California at Berkeley.

In terms of my professional experience, I take pride in the fact that I'm a career civil servant. I actually began my public service as a Sergeant at Arms for the State Assembly. From that point and after graduating from the University of California at Berkeley, I entered state service and grew to management positions in a variety of state departments in both

1 personnel/labor relations and financial management.

2 In 1983, I was appointed to the Department of Finance
3 and spent approximately seven years there. I rose through
4 various management assignments in the Department, including
5 Chief Deputy Director for the Department for the last three
6 years.

7 There two key areas of my responsibility I'd like to
8 focus on. First, labor relations, I worked with the labor
9 unions throughout California in trying to deal with changes,
10 innovative changes to the compensation programs, including the
11 installation of the first flexible benefits program for state
12 employees. In addition, I worked with the State Teachers to
13 modify the State Teachers Retirement System to provide for a
14 more solid benefit structure and a financially solvent system.

15 I also had primary responsibility for local
16 government affairs. I was the lead on issues such as the trial
17 court funding bill. But most importantly, I tried to assist
18 local government in a wide variety of issues that were placed
19 before them. As you know, the relationship with local
20 government is very complex. We have many shared programs, and
21 the administration of those programs is critical to the delivery
22 of coherent and effective programs at the local level.

23 Today, I was working with a newly appointed
24 Governor's Local Policy Council -- Local Government Policy
25 Council to take a look at some of the issues we will be facing
26 in the next couple of years. I believe that the experience I
27 have gained in the Department of Finance and in Health and
28 Welfare in the local government area will assist me as we try to

unravel some of the difficulties we have in local government.

Additional financial experience I've had included almost a year at the State Treasurer's Office. I served there as Assistant State Treasurer, and alongside the State Treasurer, and I had direct responsibility for the management of California's $20 billion investment portfolio. I was in charge of all bond sales for the state and created the state's first College Savers Program.

Both at the Department of Finance and at the State Treasurer's Office, I was appointed to represent the state in national, state, and local forums, including representing the state before bond rating houses. I also had the opportunity to serve on the National Association of State Budget Officers. I served three years on their Executive Committee; I chaired their Health, Social Services, Education Committee and the Financial Management Committee. I was selected to be president-elect of that Association before being given the opportunity to serve as Secretary of Health and Welfare under Governor Wilson.

During the period of time I served in Health and Welfare, I believe that I learned a great deal. I supervised eleven departments, approximately 44,000 employees, with a $16 billion General Fund budget.

There are three program accomplishments that I would like to highlight from the period of time I was in Health and Welfare. These are programs that we were able to work together on, the Legislature and the Administration, and I believe that they will stand for some time as important changes within Health and Welfare.

The first is state and local program realignment. In that, in the first year of the Wilson Administration, we worked together to send counties funding along with health and welfare programs. We put into place flexibility so that locally elected officials could make determinations as to what kinds of programs made sense for their communities. I think that program is still effective, and we're seeing better results as a result of the program realignment/restructuring.

The next area is in welfare reform. I think that through the negotiations this year, that we have done a great deal to promote self-sufficiency for those people who are on aid in California. I worked closely with Senators Thompson, Leslie and Watson, and Assemblypersons Bates and Andal in order to negotiate the changes that we were able to achieve this year. The most important thing I believe we achieved was a return of work incentives to the program, where people on aid can go out and earn income and retain some of that, so there's an incentive to help support their families.

We invested more dollars under education and training through a program called GAIN. We increased our support for child care, recognizing that's an important feature in support of work efforts. We also instituted the Cal-LEARN program which provides an opportunity to assist young people with children who are on aid to complete their high school educations so they can be successful in the future.

And the last area is, we did try to beef up the welfare fraud provisions so as to assure that people who were getting aid were the right individuals.

The last area I'd like to mention under Health and Welfare are the prevention programs. I think collaboratively, we have worked together, and I'll just mention three of them that I think will be very effective: the AIM program, Access for Infants and Mothers, which provides prenatal and well baby care to low income women and children; early mental health counseling for children, kindergarten through third grade; and the Healthy Start program, where we integrate services, recognizing that the whole child needs services if they're to be successful in school. I think all of these programs were designed, recognizing that kids need good preventive care to get a head start so they can be successful as they go through school and the rest of their lives.

I'm pleased that -- with these accomplishments, because I think we worked effectively together, and I think we did it in a time when California faced the most challenging financial times we have ever faced.

In summary, the financial experience I have had, and the real world experience of running the Health and Welfare Agency, give me a balanced perspective from which to serve as Director of Finance. I have no illusions that the assignment will be an easy one, yet I feel much can be accomplished if we commit to working together to approach issues squarely, to make tough choices that we will continue to face.

I believe we have worked effectively together in the past, and I look forward to continuing to work with you as Director of Finance. I'd be pleased to answer any questions you might have.

CHAIRMAN ROBERTI: Any questions of Mr. Gould? Senator Petris.

SENATOR PETRIS: In the current fracas between the Governor and the Finance Commission, the Commission on State Finance, some of us who've been here a hundred years or more, which includes me, have seen the Department really miss out on a lot of its projections from time to time, and its forecasts, analyses, and so forth. And I know through the years that even though they get more efficient, assuming they do, and even though the margin of error might drop each year, when the budget is so huge, a small error looms very large on the ground. It's hundreds of millions sometimes.

I have found this to be true through the years. It doesn't matter who the Governor is, or which party is in the Governor's Office. It just seemed there are certain problems, undoubtedly due to the nature of the beast, you know. You just have a very, very tough job, and I want to be the first to acknowledge that.

But the fact is that it seems to me that the work of the Commission has been very helpful, not only in the projections, but in the overall picture. I don't think it was ever intended as a rival to the Department of Finance. It's a citizens group. It does have staff which has given us some very helpful reports in the Legislature. I wouldn't like to see that be removed.

I understand the Governor withdrew the money from the budget. I don't know what form the current dispute is in.

I would like your reaction, and I don't want to put

you in conflict with the Governor. But is it the Department's position that the Commission doesn't serve any useful purpose, or is it 100% duplicative, or what is the basic problem?

MR. GOULD: Well, Senator, I think first of all, I think we could stipulate that revenue forecasting is one of the most difficult things that we have to do. And the marginal difference, as you indicated, makes a tremendous difference in the decisions that you have to make in the budget and what programs you can fund.

I think in looking at the Commission, I'm aware that they have submitted a request to the Department of Finance and to the Governor to continue. I think the things to be looked at is, number one, what specific functions do they anticipate continuing? And that's what I've asked my staff to look at. And also, what the funding source that they plan on having. As I understand, they're expecting to have reimbursements. I think we need to look at the source of those reimbursements and see where that's coming from to make sure that there is an appropriate funding source. I'm willing to look at that.

I think the Governor was very sincere in working with you in the elimination of many boards and commission. I think there was well over 100 that have been eliminated in the last couple of years.

And so, we would take a look at this and reassess what they're suggesting to see if, in act, it continues to be duplicative, which was our assessment initially.

SENATOR PETRIS: All right. Let me give some examples, according to my excellent staff work here. Not mine;

the Committee's.

I'll give an example where the Commission did well, and I'm sure there are examples where they missed the boat, too. I don't know the whole story. But in October of '91, the Commission was the first to alert the Legislature of the depth of the recession and its impact on the state budget.

Now, at that time, as I remember, we were in big trouble. The Governor's budget painted a very rosy picture of income based, in turn, on its confidence in the national budget, which also was over-optimistic at the time, and painted an equally inaccurate picture of the need for social services. You know, they're kind of tied together. If you expect a lot of prosperity, there are going to be a lot of jobs; unemployment will be very low in comparison to the bad years, so the need for social services to help the unemployed goes way down. So, the two go together. If you're going to predict an overly optimistic year on revenues, you're going to have an overly pessimistic year on need for services. So, it gets you with a double whammy. That's why I point this out as an important example. They were ahead of Finance and differed with Finance, and they were ahead of the Legislative Analyst on whom we also rely in explaining the depth of the recession and the impact on the budget.

And the following year, in January, they reported that the Governor's new budget proposal was $16 billion out of balance -- excuse me, $6 billion out of balance. And in January of this year, they reported that it was more than $2 billion out of balance, and we learned in both cases that was close to the

mark at the time it was made.

So, those are only three examples in the last couple years of where their work has been useful and helpful.

Now, we all have our own loyalties. If a Member of the Legislature feels more confident in the Department of Finance, they're going to reject the other people's recommendations, or rather, projections and go with Finance. But if Finance is off and we all go with Finance, then we make serious miscalculations and don't plan accordingly.

Again, this is all tempered by what I said in the first place, and which you confirmed. A tiny error comes out to many millions of dollars when it hits the ground, and we understand that. But that's what makes forecasting all the more critical in a bad year.

Now, the other question I had was, do you compare notes, maybe on the Q.T., with the staff, call up the Commission, and does the Commission call your people and say, "Hey, we've got a big blip here on the radar screen. We see, according to PG&E's estimates of the connections that we're going to be way up in the next year. Are you getting the same thing?" "Well, no. The telephone company tells us just the opposite."

I mean, does that kind of dialogue go on, or is it totally and separately isolated from each other?

MR. GOULD: I think the reality is that the information available for forecasting is available to all parties who are looking at it, so there are really no secrets out there. And so, the information that the Commission looks at

is the same information that Department of Finance has to look at. So, I don't think there's really any mysteries in terms of what's out there.

It doesn't make the job any easier in terms of forecasting, but I think that all the information is really readily available to all parties.

SENATOR PETRIS: Is there any one source that's kind of relied on by everybody, like, say, the UCLA forecasting? Does that have some kind of higher status or higher degree of confidence?

MR. GOULD: Actually, one of the things that the Department of Finance does every year is bring together a group of economists from industry, from the academics, and to really look at a broad view of how different groups look at California's economy, the national economy, and to have some perspective about where collectively we see California going. So, we bring all the parties together in order to share information and to -- and that's done in confidence, because we get the perspective of some of industry's thinking as well, which they want to keep private. But we do get a broad perspective about where they see California going.

So, we try to reach out to economists throughout the state and the nation to get our best judgment s to predict the future.

SENATOR PETRIS: I guess there have to be some difference, otherwise your predictions would all be exactly the same.

MR. GOULD: That's right.

SENATOR PETRIS: So, I'm wondering, in view of the fact that they've had a pretty good track record, if we get rid of them, how is your Department going to close the gap when we don't have the benefit of their prediction?

MR. GOULD: Again, Senator, I have --

SENATOR PETRIS: You're going to have to hire some of their people, or what?

MR. GOULD: No, I think within the Department of Finance, looking at the prior role that the Commission had, I think the view was that it was duplicative.

I think we're going to look at what they're suggesting. I have not seen their new proposal.

But I think there have been a number of difficult decisions as we reduce boards and commissions throughout the state. There are well over 100 of them that have been reduced in the last couple of years. Many of them had functions that might be nice to have. We just have to access the net benefit of having them when we do have other functions that perform similar activities. So, we'll have to look at that, and I'm willing to do that.

SENATOR PETRIS: On the Health and Welfare projections, does that come out of Finance or does that start with the Health and Welfare Department itself?

MR. GOULD: It starts with Health and Welfare, but we work with the demographics unit of the Department of Finance, who can give us some long-term trends in terms of how they see demographic changes influencing the number of children, the number of people who might be elderly, who might afford

1 themselves of various services. So, we work together.
2 SENATOR PETRIS: Do you have any predictions for next
3 year?
4 MR. GOULD: My crystal ball is a little hazy right
5 now.
6 SENATOR PETRIS: A little cloudy?
7 MR. GOULD: Yes.
8 SENATOR PETRIS: I'll withdraw the question. That's
9 all right.
10 MR. GOULD: I appreciate that.
11 CHAIRMAN ROBERTI: Is there anyone here in opposition
12 to the appointment? I don't see anyone.
13 Is there a motion?
14 SENATOR BEVERLY: Move we recommend confirmation.
15 CHAIRMAN ROBERTI: Senator Beverly moves confirmation
16 be recommended to the Floor.
17 Secretary will call the roll.
18 SECRETARY WEBB: Senator Ayala.
19 SENATOR AYALA: Aye.
20 SECRETARY WEBB: Ayala Aye. Senator Beverly.
21 SENATOR BEVERLY: Aye.
22 SECRETARY WEBB: Beverly Aye. Senator Petris.
23 SENATOR PETRIS: Aye.
24 SECRETARY WEBB: Petris Aye. Senator Craven.
25 SENATOR CRAVEN: Aye.
26 SECRETARY WEBB: Craven Aye. Senator Roberti.
27 CHAIRMAN ROBERTI: Aye.
28 The vote is five to zero; confirmation's recommended

to the Floor.

Congratulations.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 3:22 P.M.]

--oo0oo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

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